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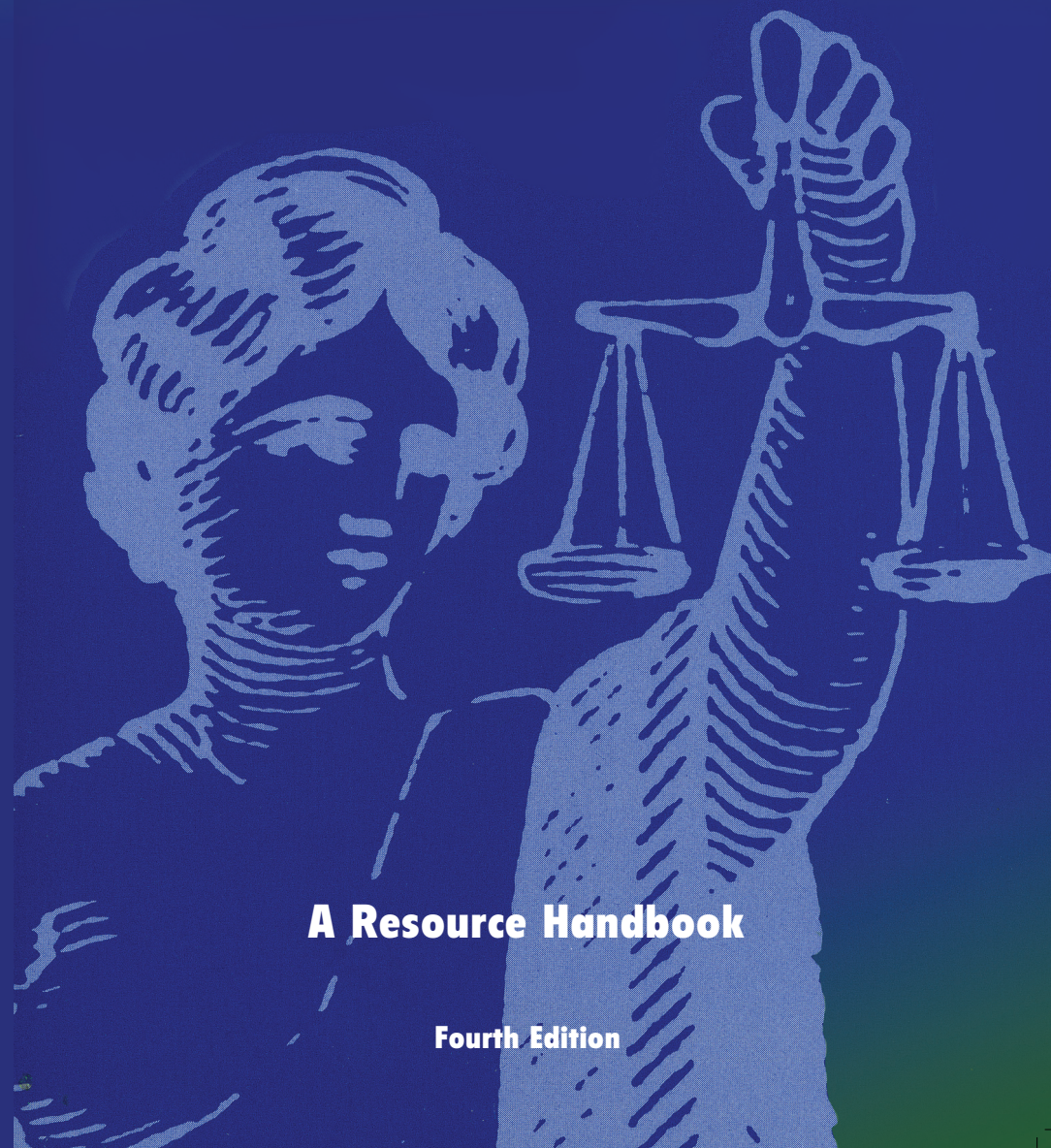
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## UTAH WOMEN AND THE LAW

### A RESOURCE HANDBOOK

# Utah Women and the Law



**A Resource Handbook**

**Fourth Edition**

**Utah**  
*Women*  
**and the Law**

**A Resource Handbook**

# **Utah** *Women* **and the Law**

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**A Resource Handbook**

**Fourth Edition, 2006**

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## PREFACE

*Utah Women and the Law: A Resource Handbook* is a project of the Utah Commission for Women and Families. Its purpose is to provide an overview of the laws concerning the most common problems faced by women. This book is particularly directed to women who, for various reasons, have limited access to legal resources. **This handbook is intended to be a practical guide on basic legal matters, but should not be considered a substitute for competent legal counsel.**

The Utah Commission for Women and Families would like to dedicate *Utah Women and the Law: A Resource Handbook* to the women of Utah, whose courage and determination to live meaningful lives and improve the lives of others are inspirational.

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# 1

## CONSUMER RIGHTS AND RESPONSIBILITIES

### SECTION A: CONSUMER CONTRACTS

While we do not have a buyer beware system, the past advice for consumers remains the same: **READ AND UNDERSTAND THE CONTRACT BEFORE YOU SIGN IT.** Courts continue to enforce provisions of consumer contracts according to their express terms even though the contract can appear to place unreasonable burdens on a consumer. Therefore, you should be prepared to do what the contract requires.

Likewise, if you sign an agreement with another, you are generally responsible to perform all of the obligations in the contract even if the other party who signed the contract does not perform. For example, if you sign a promissory note with your spouse or child, you will be responsible to make all payments on the note, regardless of whether your spouse or child ever makes a payment. Even if you are divorced and your spouse is ordered by a court to pay the family debts, the creditor can still hold you responsible under the terms of the contract.

Another way that you can obligate yourself is by cosigning a contract for another. If you cosign with another person such as your spouse or child, you will be responsible for making payments if your spouse or child defaults, unless you are released by the creditor. As a cosigner, you are guaranteeing collection of the obligation rather than payment of the obligation of another. If you enter into an agreement as a cosigner – as distinguished from a co-maker – the creditor must take certain steps prior to seeking collection of the debt from you. For instance, you would be obliged to pay if

payment from the other party becomes impossible, the other party is bankrupt or cannot be served with a lawsuit.

Therefore, it is very important that, before you sign any contract, you carefully review all the terms of the contract and ask questions if you do not fully understand. It is also important that you understand in what capacity you are signing – *e.g.*, as a signer or cosigner.

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We discuss several common contract clauses that you should be aware of and should pay particular attention to if one of these is found in an agreement you are being asked to sign.

**Acceleration clause:** This type of clause allows the creditor to demand immediate payment of the unpaid balance if you miss a payment or payments. You should also be aware of acceleration clauses that allow the creditor to accelerate your payment or performance obligations “at will” whenever the creditor believes in good faith that the prospect of payment or performance under the contract is impaired. Fortunately, if you have already signed a contract with an “at will” provision, courts have not given creditors unfettered discretion when invoking these types of provisions.

**Add-on clause:** Sometimes, a seller will allow you to buy additional merchandise and have the financing added on to your original contract. Payments made from that point forward are applied pro rata to the new merchandise and previously owned merchandise. This type of clause is troubling in that it allows a seller to claim you are in default for *all* merchandise you purchased from that seller, regardless of whether you have fully paid on any item, and can give the seller the right to repossess all of your property purchased from that seller.

**Attorney’s fees and costs clause:** If your creditor must repossess an item or sues you to collect payment, this clause requires you to pay for all legal fees and costs incurred by the creditor.

**Arbitration clause:** Contracts often include a clause that requires you to resolve any claims arising out of the contract by arbitration rather than by filing a lawsuit. Courts will generally enforce these types of clauses except in limited

circumstances. Arbitrations are binding and you have limited judicial oversight.

It is important that you understand that these clauses may not be designated with the headings we have indicated. A careful review of the language in a contract should reveal if the contract contains one of these types of clauses, even if labeled or called something else.

**Balloon clause:** A contract with this kind of clause has a final payment that is much larger than the preceding payments. If you fail to make this last payment, you may be forced to refinance at a higher rate of interest or, more likely, be in default and have your merchandise repossessed.

**Lien against your property:** If you do not pay an obligation secured by a lien, the creditor can seize anything of value you own and sell it to satisfy the debt.

**Other contract provisions:** Hidden costs lurk in the shadows of virtually every major sale. Be sure you know whether you must pay extra for delivery. Is there a service contract connected with the product that you do not really need? If you are purchasing on credit, do you understand all of the credit terms, including the finance charge? Do you wish to purchase credit insurance? How much does credit insurance add to the total cost? Know the answers before you sign any agreement. Remember the general rule—once you have signed, you are responsible for doing what the contract requires.

It is also important for you to understand that a “contract” can generally come in any form, and generally no degree of formality is required to form a contract. That being said, for ease of understanding, most contracts fall within one of the following types:

**Retail installment contract:** This type of contract, also referred to as a conditional sales contract, allows you to receive the merchandise at the time of signing while the purchase price may be paid over the term of the contract. If you fail to fulfill the terms of this contract, the seller can “accelerate” all payments and, under certain conditions, repossess the merchandise. If you fulfill the terms of the contract, the title to the property generally passes to you. In Utah, a type of retail installment contract can be a rent-to-own agreement.

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**Promissory note:** This is a signed contract to repay money that has been borrowed. If you sign a promissory note and do not make payments at the time and place required in the contract or if you fail to pay on the note according to its terms, the lender can file a lawsuit against you.

If you do not pay under one of these types of contracts you can be sued for damages in a court of law or be compelled to submit to arbitration which, when compared to a court of law is generally a less expensive and quicker way to resolve disputes. If you have good cause for not paying, such as the goods not being received, you must present this evidence at trial or at arbitration/mediation. In addition to judicial remedies, a creditor can:

**Repossess the goods:** If you stop making payments on goods you have purchased, under certain circumstances the creditor can peaceably repossess the goods – or pick them up – and thereafter sell the goods to satisfy the loan agreement. You may still be responsible for the remaining balance provided the sale is conducted in a commercially reasonable manner and the proceeds from the sale do not satisfy the entire amount you owe.

**Get a court order to garnish wages:** The creditor may get a court order that requires repayment. A court has the power to direct your employer to pay the creditor an amount of up to 25 percent of your weekly disposable income.

## SECTION B: CONSUMER CREDIT RIGHTS

Under the Fair Credit Reporting Act and Equal Credit Opportunity Act you have a number of rights that are summarized as follows:

You have the right to--

- Receive credit in your own name if you meet the creditor's standards.
- Use a cosigner who is someone other than your husband, if one is needed.
- Refuse to answer questions about your plans for having or raising children.

- Keep your own accounts after marriage, divorce, or widowhood as long as you meet the creditor's criteria.
- Have public assistance, alimony, pension, and child support considered as any other income.
- Know the specific reason your application for credit was turned down.
- Present information to the creditor which shows that your husband's credit rating, if it is bad, does not reflect your willingness or ability to pay.
- Demand that any incorrect information in your file be changed.
- Have your side of the story placed in the credit bureau file if unfavorable information cannot be eliminated.

## DISCLOSING COSTS OF CREDIT

To clarify the cost of borrowing money, both state and federal law require a lender to make certain written "disclosures" to a potential borrower. A consumer is entitled to receive these disclosures before the credit transaction is completed. Unfortunately, in many instances these disclosures only confuse consumers. Because of this, you should ask questions before you borrow. Make sure you understand the written disclosures, their effect, and interest rates. Know how much it actually costs you to borrow money.

## INTEREST RATES

In Utah, there is no longer a general limitation on the maximum rate of interest that can be charged to a consumer. However, if a creditor charges extremely high rates, the creditor may be guilty of "usury." The penalties for usury may include a refund of interest payments, a fine, or imprisonment of the creditor. Make sure you understand how much interest you are paying on credit card purchases and shop around for the best interest rates.

## LATE CHARGE FEE

Creditors base interest rate charges on the assumption that you will make your payments on time. If you fail to make a payment as scheduled, the creditor may impose a one-time late payment penalty fee of \$20 or 5 percent of the late payment, whichever is greater. Late charges are generally not part of the finance charge, but the penalty fee must be disclosed to you before you enter the credit transaction.

## RIGHT TO A REBATE WHEN LOAN IS REPAYED

If you pay off a loan before repayment is due, you are entitled to a refund of the interest you paid in advance. Before you enter a credit transaction, a lender must tell you the method by which a refund will be calculated.

## RIGHT TO CANCEL

You are guaranteed the right to cancel a consumer credit transaction without any penalty (1) if you put up your home to secure repayment of your loan or (2) if the sale of goods on credit was solicited and completed at your home or place of employment. If you decide to cancel such a credit transaction, you must notify the creditor within three business days after completing the transaction. The creditor must return any deposit or money you paid and cancel the security agreement within ten days after receiving your notice. You must then return any goods you received as a part of the transaction. You may not be able to cancel a home solicitation sale if you have asked the seller to provide the goods without delay, he has done so, and you cannot deliver the goods in as good a condition as when you received them. This right to cancel is often referred to as a “cooling-off period,” but a seller does not need to let you out of a deal just because you have second thoughts. Except as described above, a seller is entitled to enforce the terms of a contract once you have signed it.

## SECURITY INTEREST

To ensure repayment of money you borrow, a lender may require that you pledge some of your property as collateral. This means that you agree that the creditor has the right to take the pledged property from you if you fail to repay your loan. This arrangement is called security interest. This does

not mean, however, that a creditor can use “self-help” remedies and take the property. A lender must take the property only if it can be done peaceably, or by court order.

## COURT JUDGMENT

If you have a court judgment against you, it is important to know how the judgment can be collected. Once a judgment has been obtained against you and is entered into the Registry of Judgments with the clerk of the district court, it becomes a lien against you, thereby attaching to all real estate owned by you in the county where it is recorded. Under certain circumstances, the person with the judgment against you can seek a foreclosure sale of your property, including your house, to collect the amount of the judgment from the sale proceeds.

The person with a judgment against you may also take personal property away from you. However, a number of items are exempt from collection. Exempt property includes clothing, household furniture, household utensils and appliances, and similar personal property that is “reasonably necessary for one household”; the house or mobile home in which you live, to the value of \$8,000 for the head of the family and additional amounts for a spouse and dependents; tools, machines, furniture, books or other property used in your trade or business valued at less than \$1,500; certain life insurance money; public assistance; an interest up to \$1,500 in one motor vehicle if it is used for your business or profession; and other assets traceable to certain awards and rights. These exceptions do not apply if you have voluntarily given the creditor a lien on your property. Social Security and VA benefits and other retirement income cannot be taken from you except for payment of federal taxes, child support, or alimony. In order for you to keep these items, you must file a declaration of homestead with the county recorder or give a copy of the declaration of homestead to the sheriff before the time at which the sheriff is scheduled to sell the items to pay your creditors.

If you have a lawsuit filed or a judgment taken against you, be sure to seek advice from an attorney to be certain your rights are protected. Seek help promptly, since there are short deadlines within which your rights must be asserted.

## CREDIT CARDS

When you apply for a credit card, the company issuing the card must tell you when it will charge interest and finance charges, how high its interest will be, and the minimum payments required. Each billing statement you receive will tell you how the finance charge is determined, how long you can postpone paying without having to pay a finance charge, and the minimum payment required.

Your billing statements must contain an address to which you can write if you disagree with your bill. If you disagree with your bill, you must write to your creditor within sixty days from the date of the statement and tell the creditor why you believe your bill is wrong. The creditor must respond to your disagreement about the bill within thirty days and resolve the dispute within two billing cycles, but not more than ninety days. So long as the dispute is not resolved, you do not need to make any payments for the amounts in dispute. The creditor may not collect any disputed amounts or any finance charges on those amounts.

Until a creditor carries out these error resolution procedures, he cannot close your account, nor can he adversely report on your credit standing because of your failure to pay the disputed amounts. If a creditor does not follow these procedures, he must forfeit the disputed amount, up to \$50, regardless of whether an error was made.

Utah law protects you from illegal use of your credit cards. You are liable for a maximum of \$50 in losses in the case of unauthorized use of any credit card that has been stolen from you, if you report the theft to your credit card company.

## WHAT TO DO IF YOU ARE DENIED CREDIT

If you are denied credit, you must be told why. Your denial of credit may be based upon a credit bureau report—a report prepared by a company that specializes in keeping files on the credit history of people who borrow money and repay loans. When a credit bureau report is the reason you are denied credit, you can ask about the information contained in your credit file and request an investigation to determine if that information is complete and accurate. If the credit bureau made an error in compiling your credit history file,

it must correct the error. If your dispute with the credit bureau is not resolved, you can submit a written statement to the credit bureau reporting your side of the story. Your statement will become part of your permanent credit record. In addition, if you believe there is inaccurate or misleading information in your credit-history file that is not corrected, you can complain to the Federal Trade Commission or the Credit Division of the Utah Department of Financial Institutions.

## CREDIT INSURANCE

Credit insurance is a type of insurance that is sold in connection with loans and credit sales. Credit life insurance will pay off a loan if the borrower dies. Credit accident and disability insurance will make payments if a borrower is sick for an extended period or disabled. Credit insurance, however, is very costly and has questionable value. It is rarely necessary and normally should be avoided. Although it is optional, in most cases borrowers who purchase it are not adequately informed and do not know that they are paying for the insurance.

## SECTION C: PRODUCT WARRANTIES

A warranty is an express or implicit representation made by a seller or manufacturer about the quality or performance of an item.

### EXPRESS WARRANTY

An express warranty explains what the seller or manufacturer will do for you if there is a problem with the item you are thinking about buying. If a salesperson states that a product has a guarantee or warranty, you should ask for a written copy of it because express warranties not in writing may be difficult to prove. Watch for the words “as is” on any sales contract because this means the seller makes no promises about its quality or performance and may negate oral promises.

### IMPLIED WARRANTY

There are two types of implied warranties. First, the implied warranty of merchantability generally applies to all

products. This states that there is an implied warranty that the product is suitable for the use for which it was intended. For example, if you buy a camera it is implied that the camera will function and work similar to other cameras on the market. This goes to the basic functions of the camera and not the bells and whistles. The second type of implied warranty is the implied warranty of fitness for a particular purpose. If the purchaser expressly or by implication makes it known to the seller the particular purpose of the item and it appears that the buyer has relied on the seller's judgment, an implied warranty of fitness arises for the particular purpose. This means that if you tell a shoe salesperson that you want a pair of climbing shoes, there is an implied warranty that the shoes he or she picked for you are indeed fit for climbing.

## OTHER WARRANTIES

**Used Car Rule:** All used car dealers must display a buyer's guide in the window of the vehicle. This guide is designed to protect against false statements and omissions of material facts. Although the format of the buyer's guide may vary, every buyer's guide will contain a disclosure of the warranty; if there is no warranty it will be marked "as is." Also, there will be a disclaimer or warning essentially saying that oral promises are very difficult to prove and the purchaser should get all promises in writing. This is always a good idea but is particularly important when buying a used car. This disclaimer may sound like a nice reminder or warning but functionally it erases any promises the salesperson may have made that are not in writing.

**Home Warranties:** Although some states do have specific home warranty laws, Utah does not. However, there are some general implied warranties, which apply in Utah, that protect against the seller interfering with the purchaser's quiet enjoyment of the land. Also, courts have enforced the implied warranty of habitability, meaning that the home must be habitable.

**Landlord Tenant Warranties:** When renting or leasing there are a couple implied warranties that function to protect the lessee or renter. First, there is an implied covenant of quiet enjoyment. This basically protects the tenant from being constructively evicted by the actions or inaction of the landlord. For example, the landlord cannot rent the top level of a building to families with small children and then turn

around and lease out the bottom level to an all night dance club. The second type of warranty is an implied warranty that the premises will be safe and habitable. If the furnace breaks the landlord must fix it, or the tenant might not be required to pay rent until it is fixed. If the landlord does not fix the problem within a reasonable amount of time, the tenant may be able to hire someone to fix it and deduct the repair cost from the rent.

## SECTION D: COMMON TRANSACTIONS AND PROBLEMS / REPAIR AND ESTIMATE FRAUD

In Utah, consumers are entitled to a written estimate of charges for repairs that exceed \$25. Unfortunately, a merchant or mechanic does not need to volunteer the estimate. Instead, you must request it. Once you obtain a written estimate, you must authorize any additional charges that exceed 10 percent of the original estimate.

## AUTOMOBILE REPAIRS

When you are confronted by a repair bill that you are unable or unwilling to pay because the mechanic demands payment for unauthorized or defective work, you may get possession of your car by posting a bond with a court. The mechanic may then sue to collect the amount of the bill, but you have the use of your car in the meantime. Bonds may be purchased from most insurance agents. The clerk of the local circuit court will provide you with the necessary forms to take advantage of this law.

Also, Utah has a "lemon law" which provides you with an effective remedy if you have purchased a new car that is defective. The law requires the manufacturer or its authorized dealer, within one year of your purchase, to make all repairs promised in the express warranty that came with your new car. The manufacturer may have to replace your new car (1) if the same defect has been subject to repair four or more times during one year, or (2) if your car is out of service for 30 or more business days during your first year of ownership. If you think you may be entitled to have your defective car replaced, contact the Utah Division of Consumer Protection.

## UTILITY PROBLEMS

If you have problems with a public utility, call the company involved and ask to speak to a special consumer representative or call the Utah Division of Public Utilities at (801) 530-6652. The Public Service Commission has issued rules governing utility service to residential customers; a summary of these rules is to be provided to customers at least once a year.

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## DOOR-TO-DOOR SALES, TELEPHONE SALES

You may become legally bound to purchase goods or services as a result of a telephone conversation. Of course, making purchases over the telephone can be risky business; it does not lend itself to prudent comparison shopping. If you are interested in the goods or services offered through telephone solicitation, you should obtain the name and telephone number of the caller and follow up the call with your own call to the Division of Consumer Protection, Utah Department of Commerce, or the Better Business Bureau. If a telephone seller is reluctant to give you the information that you request and pressures you to make an immediate purchase, beware and hang up.

## SECTION E: RESOLVING CONSUMER DISPUTES, CONSUMER COMPLAINTS

Most business people give the benefit of the doubt to customers who have complaints. For this reason, you should always take your complaints to the seller first. When you do, provide the seller with copies of all important documents, such as bills, receipts, canceled checks, and repair estimates. Be calm and persistent. If your complaints are not satisfied, contact the manufacturer of the product or the head office of the store (if it is a chain). Once again, explain your problem as simply as possible and include copies of documents. If you still get nowhere, you must look for outside help.

When you have an unresolved problem with a business, you can submit a written complaint to the Division of Consumer Protection, Department of Commerce (801-530-6601). The division evaluates your written complaint and, if it feels the complaint is valid, contacts the business in an attempt to

work out a solution. If your problem is with an out-of-state mail order company, the division contacts the out-of-state seller or asks the attorney general of the seller's home state to investigate the matter and intervene on your behalf. If the division determines that a lawsuit is necessary to resolve the problem, it will refer your case to the Utah Attorney General. You can also resolve consumer disputes through small claims court, if necessary.

## ATTORNEYS

When self-help fails, you may want to seek the assistance of an attorney. If you have a low income, you may contact an office of Utah Legal Services. The Utah State Bar Association will provide you with the names of attorneys who will discuss your problem with you for one-half hour at a nominal cost.

## CLOUT WITH YOUR CREDIT CARD

Finally, if you have a VISA or MasterCard or other credit card, you may find it useful in helping you to resolve consumer disputes. You have added protection if you are dissatisfied with a product or service costing more than \$50 that you purchased by credit card within 100 miles of your home. (Mail and telephone purchases made from your home are treated as though they were made within 100 miles.) To obtain this added protection, you should first make an effort to resolve the problem with the seller. If you are unsuccessful, you should notify your credit card company, and it will remove the charge for the items in dispute until your problem is resolved. However, before taking this step, you should make sure that your complaint is legitimate, because the seller reserves the right to sue you in court to recover the purchase price.

## COLLECTION TACTICS

Collection agencies and credit departments often use questionable methods to collect debts. They may try to embarrass you at your place of employment or in your neighborhood. They may threaten to do things they cannot legally do. ("If you don't bring me \$50 by Friday, I will have the sheriff pick up your car.") They may also try to make a person without assets pay even though they know the person cannot be legally forced to pay.

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Reasonable collection practices are legal. However, if the agency makes unreasonable threats, uses harassment to an extreme, or engages in libel or slander, it breaks the law. The Fair Debt Collection Practices Act outlaws such collection practices as calling before 8:00 a.m. or after 9:00 p.m., contacting you if the collector knows you are represented by an attorney, using obscene or profane language, and threatening to take action which the collector cannot legally take. In cases of offensive collection tactics, consult an attorney or complain to the Division of Consumer Protection.

## 2

# EMPLOYMENT

### WOMEN IN THE WORK FORCE AND DISCRIMINATION LAW

Statistically, working women currently earn only about two-thirds of what working men make. Although federal and state laws require equal pay for equal work and although great strides have been made by women employees in many occupations, many women still face unequal treatment and unequal opportunities to engage in higher paying employment.

Many laws and executive orders prohibit employment discrimination on the basis of race, religion, national origin, age, and gender. These laws are complicated and often confusing, but they offer genuine help in combating gender discrimination. Each major law governing employment is different. Laws vary in the range and types of employers covered, the types of discrimination prohibited, their scope of protection, the methods of enforcement, the procedures which must be followed, and the time limits on complaints.

If you believe you have been subjected to discrimination or unfair treatment, you should assert your rights under the applicable laws as quickly as possible. Since you must comply with the individual requirements of each law under which you may have a claim, it is wise to consult both the Utah Anti-Discrimination and Labor Division (UALD) and a lawyer to obtain help with employment discrimination claims.

### CAN I BE FIRED AT ANY TIME?

For a number of years, Utah has been an “employment-at-will” state, which means that an employer can terminate an employee “at will,” or at any time, unless the employee has a contract for a certain length of time, or unless the employee can prove that the employer has violated a law by terminating unjustly, for example, because of unlawful discrimination.

There are a few exceptions to the employment-at-will doctrine. For instance, provisions in an employee's manual or oral promises may sometimes be considered to create an employment contract. The law is complex, so it is wise to consult with an attorney if you have been fired.

## WHAT FEDERAL LAWS ADDRESS JOB DISCRIMINATION?

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1. *Title VII of the Civil Rights Act of 1964*, as amended (Title VII), is the most comprehensive employment discrimination law prohibiting employment discrimination on the basis of race, color, religion, sex, or national origin. It prohibits virtually all forms of discrimination by private employers with fifteen or more employees; employment agencies; federal, state, and local governments; public and private educational institutions; and labor unions, including labor-management committees for apprenticeship and training. Title VII forbids practices which are intentionally discriminatory as well as those which have a discriminatory effect.

Title VII recognizes limited exemptions, permitting religious employers to prefer their own members for jobs in nonprofit activities, and allowing discrimination by employers when an otherwise prohibited classification is a bona fide occupational qualification. For example, a filmmaker can hire a white, male actor to play George Washington. Title VII prohibits discriminatory practices in all terms and conditions of employment including the following:

- Recruitment, selection, assignment, transfer, layoff, discharge, and recall
- Opportunities for promotion
- In-service training or development opportunities
- Wages and salaries
- Sick leave time and sick pay
- Vacation time and vacation pay
- Overtime work and overtime pay
- Medical, hospital, life, and accident insurance
- Retirement plans and benefits
- Other staff benefits

Title VII created the Equal Employment Opportunity Commission (EEOC), which administers and enforces the act. A complaint under Title VII must be filed with the EEOC or the UALD before it can be taken to court.

2. *The Equal Pay Act of 1963* (EPA) provides that equal pay must be given for substantially equal work performed by women and men in the same company or government office. "Equal work" considers tasks requiring equal skill, effort, responsibility, or training. Tasks should be substantially similar but need not be identical. For example, the pay for a female bookkeeper can be compared to that of a male bookkeeper working on a different ledger, but not to that of a male clerk.

The EPA does not apply to pay differences unrelated to sex. For example, it is legal to pay more according to seniority, merit, or productivity.

The EPA covers most private employees and federal, state, and local government employees, including executive, administrative, and professional employees in companies engaged in commerce. "Commerce" has been interpreted broadly to cover nearly all employers.

The EPA is administered by the EEOC, but unlike a Title VII claim, you may file an EPA suit directly in court.

3. *The Age Discrimination in Employment Act of 1967* (ADEA) prohibits age discrimination against individuals between the ages of forty and seventy, but if you have a federal job there is no maximum age.

The ADEA applies to employers of twenty or more persons, employment agencies, labor unions with more than twenty-five members, and public employers. It prohibits age discrimination in hiring, firing, training, promotion, compensation, or in other terms, conditions, or privileges of employment.

For example, an employer may not discharge an older, more expensive employee to hire a younger worker who will cost the company less in salary and benefits. However, the ADEA does not prohibit discrimination based on necessary job qualifications or standards of performance. Thus, an employee aged sixty-five can be fired if unable to do the job.

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The EEOC administers and enforces the ADEA. Claims should be filed with the EEOC.

4. *The Americans with Disabilities Act of 1990 (ADA)* prohibits discrimination in employment against the disabled. It also prohibits discrimination against the disabled in other areas, such as government services and the way buildings are designed and maintained. Employers with 15 or more employees are covered by this law.

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The ADA protects any “qualified individual with a disability” from discrimination in all aspects of employment. A qualified individual is one who (1) meets all of the requirements for employment except for limitations because of a disability and (2) can perform all of the essential functions of the job “with or without reasonable accommodation.” For example, the essential functions of a secretary may include typing and answering the telephone. If a person confined to a wheelchair can perform those activities successfully, the employer would not be able to refuse to hire the person for a secretarial job just because she is in a wheelchair. However, the essential functions of a warehouse worker may involve lifting and carrying. The employer would not violate the ADA by refusing to hire a wheelchair-bound warehouse worker who could not lift and carry.

The courts are still defining what disabilities are covered by the ADA. Both physical and mental conditions are included, including retardation, emotional or mental illness, and learning disabilities. However, conditions that are temporary or under control by medication may not be covered.

Employers must provide “reasonable accommodation” to the disabilities of otherwise qualified workers with known physical or mental limitations unless accommodation would impose “undue hardship” on the business. “Accommodation” may include, but is not limited to, access (like restroom stalls large enough for wheelchairs), restructuring jobs to allow part-time or modified work schedules, acquiring or modifying equipment, adjusting or modifying examinations (for instance, reading questions to a blind applicant), and providing services such as interpretation for the deaf. If you believe you suffer from a disability and require an accommodation from your employer, you must notify your employer. Note that your employer is required to keep your medical information confidential.

Contact the EEOC for information regarding filing claims under this law.

5. *Executive Order 11246*, as amended, prohibits discrimination on the basis of race, color, religion, sex, or national origin in federal offices or in companies which have contacts with the federal government.

In general, businesses with contracts over \$50,000 and 50 or more employees must take affirmative action. Affirmative action must be taken to ensure that students and/or applicants are employed and are treated after employment without regard for race, creed, color, religion, national origin, sex or age. Affirmative action further requires that the employer make additional efforts to recruit, employ, and promote qualified members of minority groups formerly excluded. The exact scope of required affirmative action in government contracting and other employment has been the subject of several major court challenges.

Nondiscrimination requires the elimination of all prohibited discriminatory conditions. Under Executive Order 11246 discrimination in employment is prohibited in:

- Employment, upgrading, demotion, or transfer
- Recruitment or recruitment advertising
- Layoffs or termination
- Rates of pay or other forms of compensation
- Selection for training, including apprenticeship

Unless positive action is taken to overcome the effects of systematic forms of discrimination, federal funds can be denied. If you think affirmative action may be relevant to your particular job or a job application, consult with the Labor Department, Office of Federal Contract Compliance Program, 10 West Broadway Suite 305, Salt Lake City, Utah 84101, (801) 524-4470. The office can tell you the dollar amounts per contractor that are needed to qualify and should be able to assist you with other relevant information.

6. *The Fair Labor Standards Act of 1938 (FLSA)* provides fair labor standards for nearly all private companies and federal, state, and local governments. Certain exceptions are made for schools, hospitals, fire prevention, police protection, public health, parks, and recreation.

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FLSA establishes minimum wage, overtime pay, record keeping, and child labor standards for full-time and part-time workers. Employees should be aware that only certain employees are to be paid on a salary basis; most employees are paid hourly and therefore entitled to overtime. Covered employees must be paid for all hours worked in a work week—the time an employee must be on duty or at the prescribed place of work. With some exceptions, overtime pay must be at least one and one-half times the employee's regular pay rate for each hour worked.

In Utah, employers are required to pay most employees within ten (10) days of the end of the pay period. If the pay date falls on a Saturday, Sunday or holiday, employees should be paid on the date preceding the holiday. Employers must notify employees of their pay dates and may not withhold from an employee's paycheck unless they have prior written authorization to do so.

In Utah, contact the Wage-Hour Division, U.S. Department of Labor, 10 West Broadway, Salt Lake City, Utah 84101, (801) 524-5706. The UALD also processes wage claims under the Utah Wage Claim Act. This law requires that employees be paid all wages due and owing within 24 hours if they are terminated and on the next regular pay date if the employee resigns.

If you make a complaint, FLSA-authorized representatives will investigate, gathering data about employment conditions or practices to determine compliance. If violations are found, the investigators may recommend changes in employment practices. Willful violations may be prosecuted criminally with fines, and a second conviction may result in imprisonment. Violators of child labor provisions are subject to a civil penalty for each violation. It is also a violation to fire or harass an employee for filing a complaint.

## WHAT UTAH LAWS ADDRESS JOB DISCRIMINATION?

1. The *Utah Anti-Discrimination Act* (UADA), prohibits discrimination in employment because of race, creed, color, sex, religion, ancestry, national origin, handicap, and age if the individual is forty or older.

2. The *Governor's Code of Fair Practices*, Executive Order of May 4, 1979, prohibits discrimination in employment because of race, color, sex, religion, national origin, age, or handicap by all state agencies and state contractors, including state licensing and regulatory agencies and by private employers with at least twenty-five employees.

3. The *Governor's Executive Order* of December 6, 1973, created the Office of Equal Employment Opportunity Program and requires state agencies to have Affirmative Action Plans (AAP).

Utah law varies only slightly from federal law. The UADA prohibits discrimination based on race, religion, color, sex, age, ancestry, national origin, and handicap for employees or applicants for jobs where there are twenty-five or more employees. The act excludes religious organizations, associations or corporations, or any other corporation or association that is owned by a religious organization, association or corporation, or a bona fide private membership club (other than a labor organization).

## WHAT DO THE LAWS COVER?

Title VII prohibits discrimination in classified advertisements that list a job preference (for example, "job opportunities—women") and forbids discriminatory testing for new applicants or for promotions. All testing must measure job performance.

Title VII prohibits discriminatory recruitment, hiring, and firing. For example, an employer cannot fire a woman because she "didn't fit in" with male employees. Title VII prohibits discriminatory compensation, assignment, classification, transfer, promotion, layoff, or recall. An employer cannot pay different salaries because one worker is male and another female. Company facilities and training and apprenticeship programs must be equally available.

Title VII forbids discrimination in fringe benefits, such as life and health insurance, retirement plans, and disability leave, except with respect to pregnancy, which is discussed later. Title VII also protects employees who use the procedures described in EEO legislation from employer retaliation.

The United States Supreme Court has considered so-called “mixed motive” cases in which a woman has been bypassed for promotion or other job-related benefit because of a mixture of illegal discrimination and legal considerations about her skills and performance and the employer’s needs. A majority of the Court has held that, if the woman can show that an illegal reason led to an adverse employment decision, the employer then has the burden to show that the adverse decision would have been made on legitimate factors and without the illegitimate or discriminatory one.

## 2

## IS GENDER EVER A LEGAL JOB REQUIREMENT?

Identifying a particular gender for a job is lawful in the few instances when only a man or only a woman can do it, when sex is a bona fide occupational qualification (BFOQ) for that job, e.g., actor (male) or actress (female). Very few jobs can be done only by men or by women. An employer cannot advertise for “salesmen” only. Anyone with the required experience may apply. Similarly, women generally cannot be excluded from jobs because of dangerous conditions when it is no more dangerous for a woman than for a man.

## WHAT ARE DISCRIMINATORY QUESTIONS IN A JOB INTERVIEW?

EEOC states that it looks with “extreme disfavor” on inquiries about race, color, religion, or national origin. The employer must show that the qualifications are reasonably necessary for the performance of the particular job.

Even if men and women are asked the same questions—for example, “Are you married?” “Do you have children?” —the questions may be discriminatory because the answers have different implications for women. Utah’s Anti-Discrimination Act does not specifically list improper questions, but questions designed to elicit information about race, creed, sex, color, ancestry, or national origin are improper. For instance, requests for photographs (which would reveal race) should be made only after hiring. Here is a list of other unlawful questions in an interview:

### 1. Family Issues

#### Forbidden questions

- Are you married?
- What was your maiden name? [The employer may ask if the applicant was ever known by a different name, for purposes of checking references.]
- Do you have children?
- Do you plan to have any children in the future?
- What are your child care arrangements?
- Are you/is your wife expecting a child?
- What does your wife/husband do?
- Will your family responsibilities interfere with your ability to travel for the job?

#### Permitted questions

- Will you provide the name, address and telephone number of a person to contact in case of emergency?
- Are you available for extensive travel?

### 2. Race and National Origin

#### Forbidden questions

- What is your race?
- Will you attach a photograph to your application?
- Where were you born?
- Where were your parents born?
- Where was your spouse born?
- What was your maiden name?
- What was your wife’s/mother’s maiden name?
- Are you a naturalized or a native-born citizen?
- When did you become a citizen?

## 2



- What clubs or organizations do you belong to?

#### Permitted questions

- Can you provide evidence of either United States citizenship or authorization to work in United States?
- In what languages are you fluent? [If job-related.]

### 3. Age

#### Forbidden questions

- How old are you?
- When were you born?
- What is your birth date?
- When do you plan to retire?
- When did you graduate from high school/college? [This question may be asked if necessary to verify information on the applicant's resume or application.]
- Aren't you overqualified for this position? [Denying an individual a job because he or she is "overqualified" has been found to be evidence of age discrimination.]

#### Permitted questions

- Are you over age 18?
- How many years of related experience do you have?

### 4. Religion

#### Forbidden questions

- What is your religion?
- What religious holidays will you need to take?

- What clubs or organizations do you belong to?
- Do you attend church regularly?
- What church do you attend?

#### Permitted question

- Will you be available to work during the regular work hours?

### 5. Disability

#### Forbidden questions

- [Generally, any question about the existence, nature or severity of a disability is prohibited.]
- Do you have any disability that will prevent you from performing this job?
- Have you ever had any back injuries?
- How did you hurt your leg?
- How severe is your hearing impairment?
- Are you willing to waive health insurance coverage?
- Have you tested positive for HIV?
- Does your condition require you to be absent from work often?
- Have you been hospitalized or needed surgery within the past five years?
- Do you suffer from any chronic illness?

#### Permitted questions

- If I offer you a job, will you agree to take a medical examination? [An offer of employment can be made conditional on the results of a medical examination.]
- [Generally, questions which relate to the applicant's ability to perform the essential

functions of the job are permitted. It is assumed that each example below is related to essential job functions.]

- Do you have a driver's license?
- Can you lift 50 pounds?
- Can you type 75 words per minute?
- Will you take our standardized typing test?

## 6. Criminal Record

### Forbidden questions

- Have you ever been arrested?
- Have you ever been convicted of a misdemeanor?

### Permitted questions in most states

- [Although these questions are permitted by law, the employer should ensure that they are not being used to discriminate against certain applicants.]
- Have you ever been convicted of a felony?
- Have you been convicted of any misdemeanor within the past five years, other than a first offense for drunkenness, simple assault, speeding, a minor traffic violation, an affray, or disturbing the peace?
- Have you been sentenced to imprisonment following conviction for a crime?
- Have you been convicted of any sexual offense?
- Have you been convicted of any drug or narcotic offense?
- Also note that it is unlawful for an employer to require you take a drug test unless the employer has a prior written policy and your signature authorizing such a test. An employer may terminate you or refuse to hire you, however, if you refuse to sign the drug testing authorization.

## WHAT IS SEXUAL HARASSMENT?

The EEOC defines sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.” Both men and women can commit sexual harassment. If the boss occasionally calls you “honey” or invites you out, even if you do not like the language or the invitation, these actions may not constitute sexual harassment in the legal sense. For you to have a legal claim, harassment must be related to a job or job conditions. For example, if a promotion is conditioned upon sexual favors, the condition is harassment. If you have refused to be involved in sexual conduct and any adverse decision about your job is related to your refusal, the adverse decision indicates harassment. Sexual talk or action is harassment when it “unreasonably interferes” with work performance or creates an intimidating, hostile, or offensive working environment. In some situations, an employer must control sexually offensive statements or actions by one employee directed against another or be liable for harassment against the offended person. If your employer has an unlawful harassment policy, consult that policy and promptly report the conduct to the designated company representative. Failure to follow the company's complaint policy may result in a loss of your rights. If you fear retaliation for complaining, or you have been retaliated against for complaining, contact the EEOC or UALD immediately.

Consult with the EEOC or an attorney to determine whether your situation or problem may give you legal recourse.

## CAN I BE DENIED A PROMOTION OR FIRED BECAUSE I AM PREGNANT?

The Pregnancy Discrimination Act, a 1978 amendment to Title VII, provides that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their actual ability or inability to work.

You cannot be fired or refused a job or promotion merely because you are pregnant or have had an abortion. You cannot be forced to take maternity leave if you can still work. You cannot be prevented from returning to work after maternity

leave if other employees entitled to disability leave are entitled to get their jobs back. You cannot be denied disability benefits or sick leave if other employees who are unable to work for medical reasons get benefits or leave.

An employer may establish time requirements and may prove business necessity to deny return employment in some cases. The burden of proof rests with the employer to prove the business necessity.

2

Some states require that, in general, a woman be returned to the same or comparable position upon return from pregnancy. Utah has not extended its law that far, but new laws or regulations are being considered at both state and federal levels. If you are or wish to become pregnant, ask your employer about company policy. You may also wish to consult with the EEOC, a lawyer, or a counseling agency to determine what rights you will have and what job security or reemployment you can expect.

## **WHAT ABOUT MATERNITY LEAVE?**

The Family Medical Leave Act (FMLA) covers employers with 50 or more employees within a 75 mile radius. Employees who have worked for that employer for at least twelve months and 1,250 consecutive hours are entitled to 12 weeks of unpaid leave for the birth or adoption of a child, the serious health condition of you, your spouse, or your parent. An employer may not terminate you while you are on leave, cancel your health insurance, or fail to pay its portion of those premiums. If you believe you may be entitled to FMLA, contact your employer immediately.

## **CAN AN EMPLOYER MAKE DECISIONS BECAUSE OF SEXUAL PREFERENCE?**

None of the many bills that have been introduced in Congress to outlaw discrimination based on sexual orientation have passed. Title VII's ban on sex discrimination is directed toward gender, not sexual practices or preferences. Some municipalities have adopted ordinances prohibiting employment discrimination against lesbians and gays, but no such prohibition is in effect in Utah at present.

## **WHAT ABOUT RELIGIOUS DISCRIMINATION?**

An employer must "reasonably accommodate" your religious beliefs, practices, or observances when they conflict with your job-related duties. However, an employer need not make accommodations that would impose an "undue hardship" or burden to the business. For the purposes of Title VII, religious belief is a broad concept that encompasses sincerely held ethical and moral beliefs as well as traditional religious views and affiliations.

Religious employers may prefer their own members for employment in their nonprofit activities, even though religious membership or status may not be required by the job itself.

## **WHAT DOES "NATIONAL ORIGIN" MEAN?**

The EEOC defines "national origin" discrimination broadly as including, but not limited to, the denial of equal employment opportunity because of personal or ancestral origin or because of the physical, cultural, or linguistic characteristics of a national group. EEOC considers height and weight requirements suspect if they tend to exclude individuals on the basis of national origin and are not clearly related to the needs of a particular job.

## **WHEN MUST I FILE A COMPLAINT?**

You must file a complaint under the Utah Anti-Discrimination Act or under the Acts which the EEOC administers within 180 days of the event or occurrence. The UALD can accept a complaint for the EEOC under a work-sharing arrangement between agencies. In certain circumstances you may have up to 300 days to file a claim, but in order to protect your rights, especially if you are uncertain whether you should file under state or federal law or both, act promptly and file your complaint promptly with the UALD.

If you are a federal employee or are employed by a contractor with a government contract, you have thirty days in which to contact the agency's Equal Employment Opportunity counselor. Twenty-one days after your final interview with the counselor, you will receive notification of the steps necessary to pursue your complaint if it has not yet been resolved. You then have fifteen days in which to make a formal written complaint.

2

If your job problem involves the FLSA (a wages and hours complaint, for example), make your complaint with the Wage and Hours Office of the Labor Department.

An attorney can assist you in filing and making a complaint, but only if you act promptly.

## HOW AND WHERE CAN I FILE A COMPLAINT?

In Utah, any person who is an employee or potential employee where fifteen or more are employed may file a complaint of discrimination because of race, color, sex, age, religion, ancestry, national origin, or handicap with the Utah Anti-Discrimination and Labor Division, 160 East 300 South, Salt Lake City, Utah 84110-5800, (801) 530-6801 or see listing under “Utah State Government,” “Industrial Commission of Utah.” The office also accepts complaints from groups.

You may make complaints in person or in writing, but not by telephone.

## WHAT IF I WORK FOR THE GOVERNMENT?

If you are a federal employee or are employed by a federal contractor, you must file with the agency involved, meeting the time limits specified. The agency will hold an investigation and, based on the investigative record, make a recommendation. If you disagree with the recommendation, you are given a limited number of days to file a request for a hearing with the EEOC, which will conduct a fact-finding hearing and an investigation to determine probable cause.

## WHAT DO I NEED TO FILE A COMPLAINT?

Complaint forms ask for your name, address, and telephone number, the name and address of the alleged violator, your description of the problem or objectionable practice, and the harm you have suffered.

You should provide clear information about the parties and the problem and should have in mind the remedy you are seeking. Do you want to be rehired? Do you want only back pay? Awards for back wages are limited to two years prior to the date on which you filed your complaint.

Your records will be kept confidential, but the employer will be notified of your charges.

## WHAT DO I HAVE TO DO TO PROVE DISCRIMINATION?

Employment discrimination cases use two general concepts to identify unfair treatment:

1. *Disparate treatment*: the employer treats some people less favorably than others because of their race, color, religion, sex, national origin, or age—for example, if women are not considered for promotions to managerial levels.

2. *Disparate impact*: the employer’s practices look neutral but, in reality, fall more harshly on one group than another and cannot be justified by business necessity.

## WHAT HAPPENS AFTER I FILE MY CHARGE WITH UALD?

Your employer receives a copy and is asked to respond within ten days. After UALD receives the response, it may schedule a resolutions conference with you and your employer. If you cannot settle at that point, UALD appoints an investigator to collect more information. After investigation, the UALD investigator drafts a determination of cause or no cause, meaning there is cause for complaint or no cause. Agency investigations typically take up to eighteen months to complete.

## HOW DO I BRING SUIT?

After you file your claim with the UALD, you may keep the claim at the agency and wait for a decision, or you may withdraw your claim and seek a right-to-sue letter. You must file your lawsuit within ninety (90) days of receiving your right-to-sue letter.

Promptly consult either UALD or EEOC and seek legal counsel to protect your rights and to meet time requirements.

## WHAT IF THE BOSS RETALIATES?

Reprisals and harassment of the employee are unlawful. You can file a second charge of retaliation against a harassing employer or employees. The employer will then be notified of the second charge.

## WHAT SHOULD I DO IF MY UNION HAS DISCRIMINATED?

2

If you are represented by a labor union that has fifteen or more members, you are probably protected against union discrimination by UADA and by Title VII. You can follow the same procedures as against employers, and you can also seek redress under the procedures of the National Labor Relations Act, which considers discrimination by a union to be an unfair labor practice.

Forms you can use to file a small claims action or respond to an eviction are available at <http://www.utcourts.gov/ocap/>.

# 3

## MY CHILD'S EDUCATION

### MY CHILD HAS BEEN SUSPENDED/ DISCIPLINED. WHAT RIGHTS DOES MY CHILD HAVE? WHAT RIGHTS DO I HAVE?

3

Students have a right to be protected against arbitrary and excessive discipline or discrimination. However, the school needs to maintain order. The school's discipline policy must treat students fairly without illegal discrimination. Utah law allows a school board to create its own discipline policies. Every student and parent should receive a copy each year. If you have questions about the policy you should ask for a copy.

You have the right to receive notice from the school throughout all steps in the discipline process. Your child has a right to a hearing and you have the right to attend. Students have a constitutional interest in attending school and that right cannot be taken from them without due process of law. The hearing is an opportunity for everyone to "tell their story" and to reach a decision on the child's discipline. You can appeal the decision if you feel it is not appropriate.

If your child has vandalized school property, the school can withhold records or the child's diploma until the damages have been paid.

### CAN THE SCHOOL SPANK MY CHILD?

Corporal punishment is only allowed in Utah if the school has the parent's written permission.



## WHAT PRIVACY RIGHTS DOES MY CHILD HAVE AT SCHOOL?

Your child is protected by the Federal Family Education Rights and Privacy Act and the Utah Family Educational Rights and Privacy Act. These laws protect the student's educational records from becoming public.

The law gives five rights to the student and parent. First, you have the right to inspect school records. You can request a copy of your child's file at any time. The file would contain information such as immunization records, grades, discipline referrals, etc. Second, you have the right to receive notice of your rights under the law. You will receive those notices annually, usually at the beginning of the school year. Third, you have the right to request a change in records. If you review your child's file and find errors or feel that the information is incorrect, you may ask for the information to be changed. For example, if your child's file includes documentation of a suspension that never happened, or your child's grades are incomplete, you can ask for this information to be corrected. You can also request a hearing to make the change. If the school determines that they will not make the change, the student or parent can have a note entered in the record that they disagree with the records. Fourth, you have the right to limit disclosure of records without consent. Generally, any school record cannot be disclosed without written consent of the parent. This includes activities such as students grading each other's papers, handing out papers, posting grades, and referral slips. Fifth, and finally, you have the right to file a complaint if the school does not follow procedures or fix problems. You can file a complaint with the Family Policy Compliance Office at: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW Washington, D.C. 20202-5920.

## MY CHILD'S FIRST LANGUAGE IS NOT ENGLISH. WHAT ARE HIS/HER RIGHTS?

Bilingual education is not a fundamental right. However, English skills are a pre-requisite to participation in public school, and failure to provide instruction constitutes inequality of treatment. Each school can decide how to handle this issue, so you will want to discuss your needs and the school's resources with the teachers.

## MY CHILD IS NOT SUCCEEDING ACADEMICALLY AND IS DISABLED OR MAY HAVE A LEARNING DISABILITY. IS THERE ANYTHING THE SCHOOL NEEDS TO DO?

Yes. There are several federal laws that require the schools to find the children who have disabilities and create an atmosphere where that child can succeed. The school cannot discriminate against your child due to a physical, mental, or learning disability. All children are required to receive Free Appropriate Public Education (FAPE). Children with disabilities must also have meaningful access to education provided by the school. The school must evaluate your child for learning disabilities if you or the teacher suspects one. The evaluation may determine that the student does not have a disability. If the student does not qualify, then the special programs detailed below do not apply to the student. A physical disability that interferes with learning, such as Attention Deficit Hyperactivity Disorder (ADHD), or a mental condition that interferes with learning, are different than a learning disability. These qualifications are done by a doctor.

Schools are required to:

- Find all children with disabilities that need help;
- Notify parents; and
- Evaluate children.

For each child with a disability an Individual Education Plan (IEP) must be created. The IEP team will consist of teachers, administrators, counselors, the student, and the parents. The IEP creates individual objectives and goals in the least restrictive environment. It is a meeting and a document. You are entitled to an IEP meeting annually and whenever else the team determines the child would need one. Your child's individual needs dictate the IEP. An IEP must include:

- Present levels of educational performance (what the student can do now);
- Measurable annual goals (what the student will learn in one year);
- Short-term objectives or benchmarks (steps to meet the annual goal);

- A statement of special education retained service and supplementary aides, services and modification to be provided (what the school will do for the student);
- Dates when service will begin and end, and the amount of time for services, such as occupational therapy (time line of services);
- A statement of the student's transition service needs beginning at age 14, and a full scale transition plan beginning at age 16, or younger when appropriate.

Five areas that must be considered in the IEP:

- Behavior, for students who have behavior needs affecting their learning;
- Language, for students with limited English skills (however, English as a second language does not by itself qualify a child for an IEP);
- Braille instruction for students who are blind;
- Communication for all students and communication and language needs for students who are deaf or hard of hearing;
- Assistive technology for all students.

Parents have the right to:

- Request an IEP meeting at any time;
- Be present at the IEP meeting;
- Invite others to the IEP meeting;
- Receive a hard copy of the IEP;
- Have any part of the IEP explained to them.

### **CAN MY CHILD WITH DISABILITIES BE DISCIPLINED OR SUSPENDED?**

Yes. However, if the child is consistently having discipline problems it may be an indication that the IEP needs to be changed. If a child has been suspended for more than 10 days in a row, it may be an indication that the IEP has been changed. The school must reevaluate with the IEP team.

## **RESOURCES**

National Information Center for Children and Youth with Disabilities (NICHY)  
P.O. Box 1492  
Washington, D.C. 20013  
800-695-0285

Utah Parent Center Disability Law Center  
2290 E. 4500 S., Suite 110  
Salt Lake City, UT 84117  
801-272-1051

### **I DON'T APPROVE OF WHAT IS BEING TAUGHT IN SCHOOL. CAN I DO ANYTHING?**

Utah law states that school boards will determine text books and that the use of the text books is mandatory. For health or sex education, each school must notify each parent and give them an opportunity to view and review all material that will be presented. The parent may choose to have their child opt out of this instruction.

### **CAN I GET A FREE OR LOW COST BREAKFAST OR LUNCH FOR MY CHILD?**

Yes. If your income falls below 130 percent of the federal poverty guidelines, you may qualify for free meals for your child. If your income is between 130 percent and 150 percent of the federal poverty guidelines, then you may qualify for reduced cost meals for your child. See [www.usoe.gov](http://www.usoe.gov) for more information. Contact the Utah State Office of Education Child Nutrition Programs (<http://www.usoe.k12.ut.us/cnp/index.htm> or 801-538-7680) for the paperwork to apply for meals assistance.

### **THE SCHOOL SAID MY CHILD CANNOT ATTEND DUE TO ILLNESS. IS THAT RIGHT?**

The Department of Health may require the schools to keep children with certain communicable diseases out of school.

### **THE SCHOOL SAID MY CHILD CANNOT ATTEND UNTIL IMMUNIZED. IS THAT RIGHT?**

As prescribed by the Department of Health, children must be immunized and provide documentation of those immunizations prior to attending school. There are a few exceptions for religious convictions.

### **THE TEACHER HAS A PERIOD OF SILENCE BEFORE CLASS STARTS, IS THAT OK?**

3

Yes. Utah allows a period of silence; however, no religion can be endorsed by the public school.

### **DO I HAVE TO PAY FOR MY CHILD TO ATTEND PUBLIC SCHOOL?**

No. Public school in Utah is free. If your child wants to participate in extracurricular activities, you will have to pay for those expenses. Your child will need to bring personal items such as pens, paper, binders, etc.

## **4 CHILDREN: CHILD CARE, ADOPTION, CHILD CUSTODY AND SUPPORT, CRIMES AGAINST CHILDREN, RIGHTS OF MINORS, CHILDREN WITH DISABILITIES**

4

### **CHILD CARE**

In 2004, Utah indicated a firm commitment to sustaining safe, quality child care in the state by establishing the Office of Child Care Licensing (OCCL) as a separate agency within the government. All child care providers are required by law to be licensed by the state. A list of licensed child care centers, family child care providers, residential child care providers, and hourly child care providers is available from OCCL at [www.health.utah.gov/licensing/index.htm](http://www.health.utah.gov/licensing/index.htm), or by calling 801-538-6152, or toll free 888-287-3704. The website contains a wealth of information, including a guide to selecting a child care provider and instructions for how to become a licensed child care provider.

## ADOPTION

### WHO CAN ADOPT A CHILD?

In Utah, any adult person may adopt a minor child (i.e., a person under the age of eighteen years) as long as the adopting person is at least ten years older than the adopted child. A single adult may adopt a child, but only if the adult is not living with another person with whom the adult has a sexual relationship. If a married person wants to adopt a child, his or her spouse must consent to the adoption.

### WHEN IS A CHILD LEGALLY AVAILABLE TO BE ADOPTED?

If the child to be adopted is not orphaned, both biological parents must consent to the adoption, fully relinquishing their parental rights and giving up custody and guardianship of the child. This happens, for instance, when unwed parents give up a newborn baby for adoption. An unwed mother can give up her baby for adoption without the consent of the father when he does not claim rights of paternity, as long as several legal requirements for terminating the father's parental rights are met.

If biological parents will not voluntarily relinquish or consent to termination of their parental rights, a court can still terminate those rights. This occurs in some child abuse cases, or when parents have had no contact with their child or have failed to support him or her, and the court determines that the child is abandoned.

If a biological parent of a minor child is a minor, he or she is legally treated as an adult with respect to relinquishing his or her parental rights or consenting to an adoption.

### WHAT ABOUT GETTING CONSENT FROM THE BIOLOGICAL FATHER OF A CHILD WHEN THE PARENTS AREN'T MARRIED?

If the child's biological parents were never married, the consent of the biological father (or man who claims to be the father) to adoption of the child is necessary only when he complies with legal requirements demonstrating his

commitment to the child both before and after birth. In order for his consent to adoption to be required, an unmarried biological father must provide appropriate medical care and financial support for the mother and child, must have contact with the child, and must legally establish that he is the biological father. He may achieve this last requirement, called a legal determination of paternity, by either a voluntary declaration of paternity (signed by the unmarried biological father and the mother) or by initiating a legal action to establish paternity. An unmarried biological parent (mother or father) who is a minor must have the signature of a parent on a voluntary declaration of paternity document.

If a baby is to be given up for adoption at birth, a form must be filed with the state registrar within the Utah Department of Health. The biological father may complete and file the form before the baby is born, but the biological mother must wait until 24 hours after the baby is born to consent to the adoption.

### CAN I ADOPT A BABY IF I AM NOT MARRIED?

The law states that adult persons may adopt a child. However, an adult who is "cohabitating" may not adopt. "Cohabitating" means that a person is residing with another person and is involved in a sexual relationship with that person. Besides cohabitation, an adoption agency cannot refuse to let you adopt a baby simply because you are single. Adoption agencies are, however, charged by law to safeguard a child's interests, and may determine—other circumstances being equal—that it is better for a given child to be in a two-parent home. It is best to discuss internal policies frankly with an adoption agency.

In each case, an adoption agency will conduct a thorough investigation, which includes marital status (married persons who have an obviously poor marriage will not be good candidates for adopting a baby), religious background, family constellations, financial position, employment status, personal qualities, and parenting ability.

## WHAT ABOUT ADOPTION AGENCIES – HOW DO THEY WORK?

All adoption agencies or organizations must be licensed by the Utah Department of Human Services (DHS), Office of Licensing. This department annually reviews every organization, public or private, which is organized as a child placement or adoption agency, for fitness and compliance with the department's standards and regulations. Licensed agencies or organizations must keep and maintain records for each child they register, including the child's vital statistics and records concerning the child's biological and adoptive parents.

Questions about adoption agencies can be fully addressed by the Office of Licensing within DHS, by going to [www.hslic.utah.gov/adoption.htm](http://www.hslic.utah.gov/adoption.htm) or by calling 801-538-4242. A listing of licensed adoption agencies and organizations is available on the website, too, at [www.hslic.utah.gov](http://www.hslic.utah.gov) by clicking on Licensed Facilities on the left side of the screen, then Find a Facility, and last Private Child/Family Programs.

All questions about adopting children in Utah can be addressed by Utah Child and Family Services, which maintains a website dedicated to adoption issues at [www.utdcfsadopt.org](http://www.utdcfsadopt.org). The telephone number is 801-265-0444.

## CHILD CUSTODY AND SUPPORT

### CHILD CUSTODY

Child custody is addressed in the chapter of this book concerning Marriage and Divorce law. The laws concerning child custody with respect to divorcing parents have also traditionally been applied in matters concerning children of unwed parents.

### WHAT IS CHILD SUPPORT?

Under the law, parents (biological or adoptive) must financially support their children and provide for their care. When married parents separate or divorce, or when parents are not married, Utah law and the law of each state of the United

States sets forth requirements for parental financial support of children. Failing to financially support a child under these laws can be considered a criminal offense, punishable by jail and/or a fine, and is a violation of civil law.

Generally, child support is determined through a court order during a divorce, or through an administrative determination by the Utah Office of Recovery Services (ORS), an agency of the Department of Human Services (DHS). The amount of child support that is each parent's responsibility is usually determined by applying a mathematical calculation set forth in Utah law. One parent pays to the other his or her share of the overall child support that is required. The payments are usually made on a monthly or bi-monthly schedule.

Comprehensive information about child support, including a child support calculator, is available at the ORS website, [www.ors.utah.gov/child\\_support\\_services.htm](http://www.ors.utah.gov/child_support_services.htm). The main telephone number for ORS is 801-536-8500, or toll free 800-662-8525.

## WHAT IF THE FATHER OF MY CHILDREN IS NOT PAYING CHILD SUPPORT?

If the father has been ordered to pay child support and does not do so, you can contact ORS for assistance, or file an action with the court to enforce the order. ORS can exercise its authority to collect child support for you, including taking such actions as garnishing the father's wages and intercepting his income tax refunds. Each state has an office like ORS, so if the father is not in Utah, ORS can still help you get his child support payments from him. If the father refuses or fails to pay the ordered child support, he can be prosecuted and sentenced to serve jail time. While this is not a common result for failure to pay, the fact that it can occur can encourage a father to pay child support.



## WHAT IF I WANT TO CHANGE THE AMOUNT OF CHILD SUPPORT THAT THE FATHER IS PAYING?

The amount of child support may be modified if there is a “material or substantial change in circumstances.” Generally, this means that the income of one parent or the other has substantially increased or decreased, as long as a decrease in income is not intentionally caused by a parent trying to avoid paying child support. You may seek modification of an existing child support order through the courts or through ORS.

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## WHEN DOES CHILD SUPPORT STOP?

Child support stops when a child reaches the age of eighteen or graduates from high school in the normal course and year of expected graduation.

## CRIMES AGAINST CHILDREN

### WHAT ARE CRIMES AGAINST CHILDREN?

As just mentioned, failing to support your children can be considered a crime. Most of the time, though, we think of abuse, neglect, and other harmful physical or emotional acts against children as crimes against them.

Under Utah law, a person can be considered to have abused a child and to be subject to criminal penalties if he or she causes or permits another person to cause any sort of physical injury to the child, beginning with injuries as minimal as a bruise, minor laceration or abrasion. Child abuse encompasses virtually any sexual or sex-related act that is not already specified as another kind of crime. Causing serious emotional harm to a child and committing an act of domestic violence in the presence of a child are considered to be acts of criminal child abuse.

Crimes against children also include encouraging, allowing, or compelling behavior that might contribute to a child’s delinquency; willful abuse, neglect, or abandonment; kidnapping or enticing a child away from home or sheltering a runaway; or providing a child with alcohol or controlled substances.

An adult can be arrested and charged with committing a crime against a child and prosecuted in criminal court. The sentence for a person found guilty of committing a crime against a child will depend on the particular crime committed and the specific circumstances of each case.

## HOW CAN I REPORT CHILD ABUSE?

Anyone who suspects or knows that a child is being abused should immediately contact his or her local police department or sheriff’s office or call the Division of Child and Family Services’ (DCFS) toll-free hotline at 800-678-9399. Your identity can be kept confidential. Also available is the Statewide Domestic Violence Info-Line, 800-897-5465, where you can get a referral to counseling, shelter and other services.

All reports of suspected abuse or neglect are confidential. If you report child abuse, however, you have a right to notification that the investigation has been completed.

## WHAT HAPPENS TO CHILD ABUSERS?

Cases involving children can frequently involve two courts: the juvenile court, which has jurisdiction over actions involving abuse or neglect of children, and the criminal court, which prosecutes the offenders.

County attorneys are the primary prosecutors of alleged perpetrators of child abuse. The law spells out specific processes whereby the Utah Division of Child and Family Services (DCFS) and the Children’s Justice Division of the Attorney General’s Office act in support of the county attorneys to hold child abusers criminally responsible for their crimes against children.

Proceedings in juvenile court are commonly referred to as child welfare proceedings. An example of these proceedings occurs when someone reports that a child is being abused by his or her parents. Upon receiving such a report, if DCFS finds evidence of abuse or neglect, a request will be made for an attorney in the Children’s Justice Division to file a petition alleging abuse or neglect and asking the juvenile court to issue appropriate orders to correct the situation. (Neglect differs from abuse – neglect means that a child is not receiving “proper

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parental care” because the parent is not able to provide the child with the basic necessities of life such as necessary food, clothing, education, or medical care, and the care necessary for his or her emotional and moral well-being.) This is not a criminal proceeding.

If the child is in danger, DCFS has legal authority to remove the child from the abusive or neglectful environment until the circumstances are corrected. When a child is removed by DCFS, the court will appoint a lawyer, called a guardian ad litem, to represent the child.

Whether a child is removed by DCFS or not, the parents receive a notice that the petition has been filed and that a hearing is scheduled for a specific date. The parents are entitled to be represented by an attorney, who can be appointed by the court, and are entitled to request a trial. The state, through the attorney from the Children’s Justice Division, is required to prove its allegations that abuse or neglect has occurred.

If the parents admit their abuse or neglect, or if the court finds sufficient evidence that abuse or neglect has occurred, the court will enter its order requiring the parents to participate in corrective treatment and to be accountable to the court for improving the condition of the child’s environment. When a child has been removed from the parents’ home, DCFS works with the parents and family toward a goal of reunifying the parents and children.

The juvenile court does not have authority to jail or fine anyone. If a child is removed from the home, however, or if the court orders that a child is to continue to stay in foster care while the parents receive treatment, the parents can be ordered to pay some or all of the costs of caring for the child outside their home.

## **RIGHTS OF MINORS**

### **IF I AM A MINOR, HOW CAN I BECOME EMANCIPATED?**

In the law, emancipation is the release of a child from the legal control of his or her parents. Some states have legal provisions for minors to seek emancipation – Utah does not. Therefore, under Utah law, minors become emancipated after they reach majority (age eighteen) or after they get married.

### **HOW OLD DO I HAVE TO BE TO GET MARRIED?**

In Utah, you have to be eighteen years of age or older, or if you are between sixteen and eighteen, have the written permission of your parent or guardian to apply for a marriage license. (If you’ve been married before and are under eighteen, you are considered an adult in applying for a second marriage license, and parental consent is not necessary.) Pregnancy does not affect these requirements.

### **WHAT ABOUT GETTING AN ABORTION?**

It is not illegal for a woman under the age of eighteen to have an abortion. Neither is it illegal for a woman who is a minor to receive contraceptives. Parental notification is not absolutely required in either case, unless you are seeking services through public funding (for example, Medicaid). The use of public funds for abortions is permitted in very limited circumstances.

## **CHILDREN WITH DISABILITIES**

### **EDUCATION**

Utah law provides that “[a]ll students with disabilities, who are between the ages of three and 22 and have not graduated from high school with a regular diploma, are entitled to a free, appropriate public education.” Because Utah views these students as “entitled” to a free education, many provisions for special education are available in Utah public schools.

Utah is also subject to the federal Individuals With Disabilities Education Act (IDEA), which contains provisions for special education for students with disabilities. IDEA defines special education as follows:

“Special Education” means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

The term includes speech pathology, or any other related service.

The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

“Related Services” means transportation and such developmental, corrective and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

Every school district in Utah must have a procedure for finding children who have disabilities. Either a parent or school personnel may refer a child to be evaluated to see if special education services are needed. Parents may submit a request to the Special Education department at the school.

The Utah Parent Center is a good source of information on this topic. See [www.utahparentcenter.org](http://www.utahparentcenter.org), or call 801-272-1051, Español, 801-272-1067, or toll free, 800-468-1160.

## HEALTH

Children with disabilities often have special health care needs. In Utah, parents and families are helped to meet these needs through Medicaid and through Utah’s Children’s Health Insurance Program (CHIP). Information and direction to other resources is available through the Children’s Health Services Committee of the Legislative Coalition for People With Disabilities, a private organization, at [www.lcpdutah.org](http://www.lcpdutah.org), or 801-580-6091.

# 5 HOUSING AND LANDLORD/ TENANT RELATIONS

## HOUSING OPTIONS AND ISSUES

### INTRODUCTION

Options for housing are many and varied. They include owning a traditional home or condominium or paying rent for an apartment or home. Your choice of housing will depend upon your needs and financial resources. Each of these forms of housing has advantages and disadvantages, depending upon your circumstances and preferences. For example, if you own a traditional home you will be responsible for all maintenance and repairs, yard work, utility bills, taxes and insurance. By owning a condominium, you may retain a high degree of independence and privacy while avoiding the responsibilities of maintenance and yard work; however, you may also be liable for a periodic maintenance fee. By renting, you avoid responsibility for maintenance, mortgage payments, taxes, and insurance, but give up a degree of privacy and satisfaction of ownership. You should look for the form of housing that best meets your needs and resources.

### INSURANCE

If you own a home, you should keep it adequately insured against loss by fire or other catastrophe. Insurance is generally required when there is a mortgage. For home insurance, you typically pay an annual premium that varies according to the amount of your deductible and the amount of your coverage. You may choose from standard insurance, which replaces

your property up to a given value, or replacement insurance, which costs a little more but which guarantees replacement of your property regardless of the value.

## PROPERTY TAX

### Assessment and Payment

If you own real estate, taxes will be assessed on it that must be paid by November of each year. In the early summer, you will receive a valuation notice, telling you how much the county assessor has estimated your property to be worth. Your property taxes will then be calculated as a percentage of the estimated value of your property. Each autumn you will receive another notice to pay the tax. If you fail to pay it by November 30, your property will be sold by the county for the amount of the unpaid taxes plus penalties and interest. You may redeem your property from the tax sale by paying the amount due within four and one-half years. If you fail to do so, your property will be sold at an auction. Final tax auctions are typically held in May by each county.

### Reducing Property Taxes

There are some ways in which you can reduce your property taxes. One is to appeal the assessor's valuation of your property so that your taxes, which are a percentage of that value, will also be reduced. If you think your property is overvalued in the summer tax notice, you can contact your county commission's office and find out how to make an appeal. You will probably have to fill out forms and justify a reduction of the valuation of your property, which you can do by showing that comparable property recently sold for substantially less, or by having a private appraisal done showing a lower value.

You can also seek a reduction or deferral of your property taxes based on difficult financial circumstances, especially if you are over the age of sixty-five.

## SELLING OR TRANSFERRING YOUR HOME

### INTRODUCTION

Real estate is sold or transferred by means of a deed. Typically, a real estate agent or title company will assist you in selling your home and will take care of the necessary paperwork. If you sell your property to a new owner who becomes indebted to you for the purchase of your property, you should have the help of someone knowledgeable to protect your interest.

### METHODS OF TRANSFERRING YOUR PROPERTY

The law provides a variety of ways in which you can transfer property while retaining partial control over it. For example, you can transfer your real estate but arrange for the transfer to take effect only at your death. It is also possible to arrange for a responsible person to take care of your property for you should you require it. In setting up arrangements like these, you should consult a lawyer. Although these arrangements are not overly complex, they need to be tailored to fit your specific situation.

### DEATH OR DIVORCE

Of course, you can transfer an interest only in property you actually own. Often married people own property jointly, with the survivor receiving full title to the property after the death of the spouse. This ownership arrangement is referred to as a "joint tenancy." To find out whether you own your property in joint tenancy, look on the deed by which you received the property. If the deed reads: "as joint tenants with right of survivorship" (or some variant of that), then both of you own the property, with the survivor to retain full ownership when one of you dies. If the deed identifies the two people receiving the deed as "husband and wife" but does not specify that they are joint tenants, there is a presumption that both husband and wife own the property, with the survivor to retain full ownership. If two or more people receive a deed and there is no indication that they are either joint tenants or husband and wife, then, when one of them dies, that person's interest in the property goes to his or her heirs, rather than to the other person listed on the deed.

Upon the death of a joint tenant or co-owner of the property, you, as the surviving owner of the property, need to record the death of the deceased owner on the county records before transferring ownership of the house. You should contact your county recorder to obtain and file the proper form. The county recorder typically charges a filing fee.

If a couple jointly owns a house and both are on the mortgage, a spouse or partner is not automatically released from a mortgage because of a divorce or break-up. To the contrary, a lender usually won't release a debtor from a mortgage unless the person keeping the house refinances the loan, which may involve a higher interest rate and can be difficult to obtain. Because of these considerations, you should carefully consider your relationship with anyone before becoming jointly obligated on a loan with that person.

If you need assistance with the transfer of your home, you should contact a lawyer or realtor.

## **AVOIDANCE OF TAX ON SALE OF HOME**

If you have owned your home for many years, it is likely that the value of the home is substantially greater than when you purchased it. To relieve homeowners of income tax liability for that increased value upon resale of their home, the tax laws allow an exclusion of gain in the amount of \$250,000 per homeowner/taxpayer. To qualify for the exclusion, the seller must have owned and used the home as his or her principal residence for at least two of the previous five years.

## **MORTGAGE FORECLOSURE**

Banks which lend money in Utah for the purchase of houses typically have borrowers sign a "trust deed," which is similar to a mortgage. The trust deed gives the lender the right to sell the house if the borrower defaults in making payments. Trust deeds are normally foreclosed through a non-judicial procedure, described below, which does not include a lawsuit. However, a creditor may file a lawsuit to effect the transfer of the property. If you fail to make mortgage payments to your lender, the lender will send you a "Notice of Default" specifying the amount you owe. That sum may also include attorneys' fees and collection costs. You have a right to pay sums in default at any time within three months of the date that the

Notice of Default is recorded with the county recorder of the county in which your house is located. The Notice of Default must be mailed to you within ten days of recording.

If you fail to pay the default amount within the specified period, the lender can require that you pay the entire amount of the mortgage, which will likely be much higher than the amount of the payments past due. The lender can also set up a foreclosure sale to sell your house to the highest bidder. Since the lender can bid in the amount of its debt at the sale, the lender may end up owning your house. If the lender does not receive enough proceeds from the sale to cover the debt, it can sue you for the difference. This is called a "deficiency action." You cannot guard against personal liability by giving the deed to your house to the lender. However, if you meet with the lender, the lender may agree to release you from further liability if you give the lender a deed to your house. Filing bankruptcy may also give you time to work out an acceptable arrangement with the lender regarding your house. You should consult an attorney about bankruptcy and other options if you cannot make your mortgage payment.

## **LANDLORD/TENANT RELATIONS**

### **INTRODUCTION**

If you live in a rented residence, you have rights that are specified either in a written "lease" or in an unwritten understanding between you (the tenant) and the property owner (the landlord). It is best to have a written lease that you can refer to and rely on if a dispute should arise. Besides a lease, Utah law provides you rights as a renter.

### **LEASE PROVISIONS**

The central purpose of your lease is to allow you to occupy the leased property in return for paying rent to your landlord. The lease usually covers other aspects of your relationship with your landlord, including a provision describing when and how the lease will end. Before signing a lease, you should consider the following:



## Rent

The lease should clearly set forth how much rent you must pay, along with when, how, where, and to whom it is to be paid. It should also state whether your landlord will charge you a late fee if your rent is not paid on time.

## Term

Your lease should expressly state its term, or how long it is to run. Also, your lease should state whether and under what conditions it can be renewed. Further, your lease should contain a provision about whether either you or your landlord may cancel or modify it prior to its expiration. It should explain any procedures that must be followed in the event of cancellation or modification.

## Deposits

When entering into a lease you may be required to make a deposit. If your landlord requires a deposit, your lease should include all pertinent information about this deposit, including its amount, its purpose, and the time and conditions of a refund. If the deposit is designed to protect the landlord against damage you may cause to the property, you should make a list of all existing damage before moving in and have the landlord sign and date the list.

## Landlord's Right to Enter Premises

The lease should state whether the landlord has the right to enter your rented premises during the period of your lease and what control he can exercise over the property.

## Tenant's Right to Use Rented Premises

The lease should also describe what rights you have to the use of the premises. It should say whether you may keep pets, have other persons live with you, or sublease the apartment to another person during the term of your original lease.

## Repairs

Under current Utah law, which includes the Utah Fit Premises Act, landlords are responsible for maintaining a residential rental unit in a condition fit for human habitation. Landlords are prohibited from renting a residential unit that is not "safe, sanitary and fit for human occupancy." Each residential unit is required to have electrical system, heating, plumbing, and hot and cold water.

Your landlord also has a duty to: (1) maintain the common areas of the rental property in a safe and sanitary condition; (2) maintain plumbing, electrical systems, heating, and hot and cold water; (3) maintain other appliances and facilities as specifically provided in your lease agreement; and (4) if your rental unit is in a building containing at least one or more other rental units, your landlord must provide and maintain appropriate garbage receptacles and arrange for garbage removal.

If you believe that your health or safety is affected by the condition of your rental unit, you are required to give written notice to your landlord. Within a reasonable time after receipt of the notice, your landlord should begin action to correct the conditions about which you have complained. However, your landlord is under no obligation to remedy conditions caused by you, your family, or your guests.

The landlord may refuse to correct the condition and may terminate your lease if your unit is unfit for occupancy. If your landlord terminates your lease, he or she must notify you in writing. If your landlord terminates your lease, then the landlord should refund any monies paid for rent beyond the termination date. However, you cannot be required to leave your residence sooner than ten days after your landlord gives you notice.

As a tenant, you also have specific duties with regard to your rental property. You are required to (1) comply with the rules of your local board of health that materially affect your physical health and safety and that of others sharing common areas; (2) maintain your rental unit in a clean and safe condition; (3) refrain from unreasonably obstructing common areas; (4) dispose of all garbage and waste in a clean and safe manner; (5) maintain plumbing fixtures in as sanitary a condition as possible; (6) refrain from increasing the number

of permanent occupants of your rental unit without the landlord's permission; (7) pay your rent when it is due; and (8) comply with your lease agreement. You may not damage or remove any part of your rental unit or allow others to do so, or unreasonably deny consent to your landlord to enter your rental unit for the purpose of making repairs. You must also respect the peaceful enjoyment of neighboring tenants.

You should also be aware that any of the duties outlined above may be allocated to a different party by a written agreement signed by the landlord and tenant.

If a reasonable time elapses after you serve the written notice on your landlord and the condition or problem has still not been corrected, you may serve a "Notice to Repair or Correct Condition" on your landlord. This notice must (1) mention the first notice sent; (2) state the number of days that have gone by with no action by your landlord; (3) state the conditions that have not been corrected; (4) demand that these conditions be corrected; and (5) state that if corrective action is not begun within three days, you will take the landlord to court.

You may be entitled to damages and injunctive relief if your landlord failed to use due diligence to correct the condition or problem.

## WHAT TO WATCH FOR

As a tenant, you should avoid signing a lease form that contains one or more of the following terms: (1) landlord is not responsible for repairs; (2) the tenant is responsible for repairs, even if the tenant is not at fault; (3) the landlord has the right to enter the rented premises without notice or at unreasonable times; (4) future rent payments are due immediately if the tenant breaches the lease; (5) the landlord is not liable to the tenant for personal injury or property damage caused by the landlord's negligence or by any other cause related to the security or condition of the property; or (6) the tenant must accept the premises "as is," particularly when there is not an opportunity to inspect the property.

In case of a dispute with your landlord, you should see an attorney, particularly before taking any self-help measures. If you are in a dispute with your landlord, you should be aware that it is unlawful for your landlord to change the locks and

refuse to give you a key, break into the rented property, or attempt to use force of any kind to enter or evict you from the property.

## EVICTION

To evict you, your landlord must give you a "Notice to Quit." If you receive a "Notice to Quit" after having broken the requirements of your lease, for example by not paying rent, you will generally be required to leave unless you correct the problem. The landlord cannot remove you from the rental property without filing a summons and complaint, and obtaining a court order for eviction. However, if you are in violation of the lease, you may be required to pay triple rent beginning three days after you receive the notice to quit. If you are renting on a month-to-month basis, the landlord may evict you for no cause by giving notice fifteen days in advance of the date you must evict the premises. (This does not apply to government-subsidized housing.)

## REFUND OF DEPOSIT

Any refundable deposit must be returned to the tenant within thirty days from the end of the lease term or within fifteen days of receiving the tenant's new address (whichever is later). If the full deposit is not returned, the landlord must provide the tenant with a written itemization of how the deposit was used to cover authorized expenses. If the deposit is not refunded or the tenant disagrees with how the landlord used the deposit, the tenant may bring legal action against the landlord to recover the deposit. A tenant may bring a small claims action without the assistance of an attorney.

## UTAH FAIR HOUSING ACT

Utah law states that a landlord may not discriminate against potential or current tenants based on race, color, religion, sex, national origin, familial status, source of income, or disability. This means, among other things, that a landlord cannot discriminate against you because you are a woman, because you have children or are pregnant, or because you receive government assistance. Discrimination may include refusing to rent to you, stating that an apartment is not available when it actually is, or changing the terms of a lease only for you.

If you believe that you have been discriminated against because you fit into one of the “protected classes” stated above, you should contact the Utah Antidiscrimination and Labor Division (“UALD”) at 801-530-6801 or toll free 1-800-222-1238. You can file a complaint by filling out a Housing Questionnaire (which you can obtain at [www.laborcommission.utah.gov](http://www.laborcommission.utah.gov) – click UALD, then click Fair Housing) and submitting it to the UALD at 160 East 300 South, 3rd Floor Salt Lake City, UT 84114-6630. Remember to save all receipts, applications, business cards, or other documents you received during your meetings with landlords. Also be prepared to provide UALD with information regarding names, addresses and a brief description of the alleged violation, along with dates. If you report your landlord to UALD, he or she cannot evict you for filing the complaint.

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## RESOURCES

Additional information regarding landlord/tenant relations is available at [www.utcourts.gov/howto/landlord](http://www.utcourts.gov/howto/landlord).

Forms you can use to file a small claims action or respond to an eviction are available at [www.utcourts.gov/ocap](http://www.utcourts.gov/ocap).

# 6

## PROPERTY RIGHTS AND THE MAKING OF A WILL

### IF I AM MARRIED, CAN I MAKE DECISIONS ABOUT MY PROPERTY AS I PLEASE?

## 6

The law generally has two categories of property. “Real” property, roughly is “unmovable” property such as land and buildings (hence the term “real estate”), while personal property is “movable” and includes clothing, jewelry, money, socks and bonds, etc. If you own property, you have certain legal rights and obligations. If you wish, you may sell, give, or will your property to someone else.

Historically, women have been given fewer property rights than men; however, Utah law has never recognized the “common law” idea that married women are incapable of owning their own property. Laws passed in Utah before it became a state in 1896 denied the additional “incapacity” of married women to hold property. Utah’s constitution provides that any property a woman acquires before or during marriage is part of her own estate and cannot be used without her permission by anyone, even to pay her husband’s debts; she can make decisions about what happens to her property “as if she were unmarried.” Utah law also gives married women the right to hold separate real and personal property. Further, if a husband acquires possession or control of his wife’s property, she has the right to sue him as if they were not married. A spouse, however, can give to or get from the other spouse a written power of attorney that allows her or him to dispose of his or her property.

## WHAT ARE THE LIMITATIONS ON A MARRIED WOMAN'S RIGHTS TO PROPERTY SEPARATE FROM HER HUSBAND'S?

Utah law allows any debts that come from “expenses of the family and the education of the children” to be charged against (or paid by) the property of a husband and/or wife.

The rights given to women also are given to men, which means that if a husband acquires property with his own money and keeps title to that property in his name, Utah law gives him all rights of ownership to that property, including the rights to sell, bequeath in a will, and to use the value of that property to pay his debts.

## WHAT PROPERTY RIGHTS DO I HAVE IF MY HUSBAND DIES?

The nature and amount of an interest you can claim in the property of your spouse depends upon when he died and whether he considered Utah his home at the time of his death.

In 1975, the Utah legislature changed former laws dealing with succession (who receives what on death) and gave a widow or widower the right to choose an “elective share” of a spouse’s estate. To be eligible for such a share you must have been married to someone who considered Utah his home. If he did, you can claim the elective share instead of what was actually designated in your spouse’s will.

The elective share statute provides a formula for determining the actual share of the estate to which you are entitled. Basically, it gives you one-third of the estate after certain adjustments. An attorney can help you identify the value of the property you shared with your husband and what your share is after his death. The determination of what property is actually included in your spouse’s estate is somewhat complex. A lawyer can help clarify that.

If after your spouse’s death, you think you might want to choose an elective share rather than the property identified in your husband’s will, you may want to obtain legal advice.

## WHAT IS A WILL?

A will is a written document in which you declare your wishes for the disposal of your property, both real and personal, upon your death. A will does not become effective until you die. All property in which you have an interest at your death becomes your “estate.” You should prepare a will regardless of how much or how little property you have. Those who are named in a will to receive a distribution are called devisee. A will is also the document in which you name a guardian for any minor children. A guardian is the person who will raise your children if you die.

It is generally recommended that you have an attorney prepare your will because there are certain legal formalities that must be observed for the will to be “probated” after your death. “Probate” is the process by which a will is accepted by a court as the last legal statement of the deceased’s intentions for distribution of the estate.

## HOW DO I KNOW IF MY WILL IS VALID?

To create a valid will you must be mentally competent (“of sound mind”), at least eighteen years old, intend the will to distribute your property at the time of your death, and not be unduly influenced or defrauded by others.

In addition, a formal will must be in writing, signed by you (the “testator”), and signed by at least two “disinterested” witnesses who are at least eighteen years of age. The “witnesses” must watch you sign the will or witness your acknowledgment of the signing and must sign in each other’s presence. A witness can receive property under the terms of the will and still be disinterested if he or she receives less than he or she would if you died without making a will. Generally it is better to get witnesses who do not receive property under the will. If you are unable to sign your will, someone else may sign for you, but only at your request and direction. It is best to sign at the end of the will so that nothing can be added by another person.

In Utah a person may also make a handwritten will. This type of will is called a “holographic” will. To be valid, a holographic will must have the material parts of the will (those that give property to people) written in the will-maker’s own handwriting. It does not need to be witnessed by anyone else,

and must be signed and should be dated. It is not a good idea to use a fill-in-the blank will form. Use it as a form to entirely hand-write a will.

Oral wills, even those made at death, are not recognized in Utah.

It is very important that you protect your right to distribute your property by consulting an attorney and creating a will.

## WHAT DOES A WILL DO?

Your intentions for the disposition of your property, as expressed in your will, will be followed as closely as possible. With few limitations, you may leave your property in any manner and to anyone you choose. The major exception to this rule is designed to help the surviving spouse. He or she has the option of accepting the share of the estate left by the will or of renouncing the will and choosing to take the elective share described earlier.

## CAN PROPERTY BE TRANSFERRED AT DEATH BY MEANS OTHER THAN A WILL?

Most contracts which are intended to pass property upon the death of one of the persons involved cannot be legally enforced. Exceptions are noted below.

A joint account in your name and the name of another person, including your spouse, which is payable to either person during their lives or to the survivor if one dies, will permit the surviving person to keep the money in the account. Accounts can also be designated POD (pay on death). A POD designation on a bank account is like naming a beneficiary to receive life insurance. The beneficiary won't receive anything until you die.

Finally, property can be owned by two people in what is called joint tenancy. Joint tenancy means that if one person dies, the surviving owner owns the entire property. Joint tenants need not be married.

## WHAT DOES "INTESTATE" MEAN?

When you die without leaving a will, you die "intestate," literally, without a legal will or testament. The intestate estate is the total property of the person who died without a will, except property that is transferred by insurance contract, joint account, trust, or joint tenancy.

Utah law specifically describes which relatives will inherit what property if someone dies without a legal will. An heir is a person who is entitled under the laws of intestate succession to the property of a decedent.

## IF MY HUSBAND DIES INTESTATE, WHAT DO I INHERIT?

Your inheritance depends on the circumstances. The intestate share passing to you as the surviving spouse is the entire intestate estate unless there are surviving issue (lineal descendants), one or more of whom are not your issue, in which case the intestate share passing to you is the first \$50,000 and then one-half of the intestate estate remaining.

## ARE THERE OTHER QUALIFICATIONS TO INHERIT PART OF THE INTESTATE ESTATE?

Utah law says that any heir receiving property through intestacy—that is, without a legal will—must survive the decedent by 120 hours. Also, the decedent's relatives of half blood inherit as if they were of whole blood. A "half blood" relative is related to the deceased by only one common ancestor, rather than two; for example, you are a child of the deceased's mother but not of the deceased's father. In addition, relatives of the decedent who were conceived before, but born after death inherit as if they had been born at the time the decedent died. It does not matter if the heir or the person through whom the heir inherits is a citizen of the United States.

For purposes of intestate succession, an adopted person is considered to be the biological child of the adopting parents. An illegitimate child is considered a child of the mother only, unless the parents were married at the time of birth but the marriage was later declared void, or paternity (fatherhood) is established by the court. Generally, fatherhood must be



legally established before death. The requirements to obtain a declaration of paternity after death are much more strict. Accordingly, steps should be taken before death to have a court issue a declaration of paternity.

### **BEFORE I MARRY, CAN I ENTER INTO AN AGREEMENT WITH MY FUTURE HUSBAND ABOUT OWNERSHIP OF PROPERTY?**

Yes. An agreement that you make with your prospective spouse is called a prenuptial or antenuptial agreement. There are many reasons for making such an agreement. First, it requires that you discuss each person's assets and liabilities. In fact, it is essential that both of you know and understand the extent of property, debts and income of the other to obtain a valid prenuptial agreement. Second, you may wish to sustain separate property after the marriage and later decide to give that property to someone other than your spouse. In an antenuptial agreement, your future husband can renounce or deny any claim to that property. Third, you could obtain a position where you earn more money than your husband. If this happens and you later divorce, the law may require you to pay alimony to your husband. Either a husband or wife can waive any claim to alimony in a prenuptial agreement.

A valid prenuptial agreement must meet certain requirements. Both people must completely disclose their assets and liabilities. The agreement must be in writing and signed by each person. Neither person can be subjected to undue influence—that is, neither can be forced, threatened or bribed to sign the document. If the value, extent or ownership of property has been misrepresented, the agreement could be rendered void.

When you think about preparing a prenuptial agreement, you should be absolutely certain that your intended husband is being completely honest in his disclosures. You should not sign the agreement until you understand all of its terms and conditions. A prenuptial or antenuptial agreement is a very important document. If you have any questions, do not hesitate to seek advice from a third party, preferably an attorney.

## **7 UTAH MARRIAGE AND DIVORCE LAW**

### **WHAT IS THE LEGAL AGE FOR MARRIAGE IN UTAH?**

In Utah, men and women who are eighteen years or older are of legal age to marry. The youngest age at which a person can legally marry in Utah is 15 years, and then only with the permission of at least one parent or guardian and a court. A man or woman under the age of eighteen cannot legally marry without written parental permission. Before a marriage license is issued, the parties are required to present proof of their age.

### **WHAT IF I AM ABUSED BY MY SPOUSE?**

In 1995 the Utah Legislature passed a comprehensive protective order statute known as the "Cohabitant Abuse Act." This is the primary means for a victim to obtain protection from domestic violence through the issuance of a "protective order" (not restraining order). The procedure is streamlined specifically to allow individuals to obtain protective orders without legal counsel. The Clerk's office in every State District Court has a packet of information and assistance for individuals seeking such orders. To obtain a protective order you must come within the definition of "cohabitant" which is a person 16 years of age or older, who: is a current or former spouse, is or was cohabiting as if a spouse, related by blood or marriage, has children in common, or resides or has resided together. A protective order will be issued only if there are sufficient grounds, defined as "abuse or a substantial likelihood of immediate danger of abuse to a cohabitant." Abuse is defined as attempting to cause physical harm, knowingly causing physical harm or intentionally placing another in fear of imminent physical harm, such as threats.

At first, a protective order is generally given to the person who asks the court for it without waiting to have the alleged abuser present for a hearing. This is known as receiving an order “ex parte,” which means in the absence of the other party to the legal action. When you ask the court for an ex parte protective order, you complete a sworn statement, called an affidavit, of the harm you have suffered or believe will occur. Then you meet with a judge who will review your affidavit and sign the ex parte order of protection if the legal requirements are met. This is done without an attorney or a hearing; a protective order hearing is scheduled at a later time. When an ex parte order is issued, it is effective from the time it is served on the abuser until the protective order hearing, which must be set to occur within twenty (20) days after the ex parte order is issued. The hearing is held before the court commissioner who may order a party to be restrained from intentionally harming or attempting to cause harm, that a party vacate and stay away from the residence or other protected address of the victim, and that there be no contact between the parties whatsoever. The Commissioner can also make temporary orders for custody, visitation, and support if these are related to the issue of abuse.

Although the protective order is a civil order, violation of such an order is a criminal offense, which is a Class A Misdemeanor with possible penalties of a mandatory fine and imprisonment.

Once issued, an ex parte protective order is automatically delivered by the court clerk to the applicable law enforcement units with jurisdiction over the protected locations. If a protective order is violated and the police are called and find the abuser at a protected address, they must arrest him.

A court may not grant “mutual” protective orders that parties stay away from one another unless each party has filed an independent petition against the other for a protective order and both petitions have been served.

The court may not deny a request for a protective order simply because of lapse of time between an act of domestic violence or abuse and the filing of the request for a protective order.

The Legal Aid Society of Salt Lake has a staff member or attorney present at the Third District Court for Salt Lake County,

located at 425 South State Street in Salt Lake City, during business hours to assist victims in completing the protective order requests (spouse abuse packets). For assistance you can contact the Legal Aid Society of Salt Lake at (801) 355-HELP. This service is available regardless of financial ability. At the time of the protective order hearing, there is currently a “friend of the Court” program which provides a legal representative or legal aid attorney to represent a victim in Court if she does not have her own attorney.

## HOW DO I START DIVORCE PROCEEDINGS?

Since marriage is a legal contract, sanctioned by the state, its dissolution is also a legal matter. When either wife or husband feels that the terms of the marriage contract have been broken, either one can file for divorce in the state district court of the county in which either has resided for three (3) months prior to the filing. For example, if you have resided in Salt Lake County since January 1st, you would be able to file for divorce in Salt Lake County as of April 1st. (Every state has a residency requirement and you should find out what that requirement is before you file if you are not in Utah.)

To start a divorce, you file a Petition for Divorce, sometimes called a Complaint for Divorce, with the court in the county where you have resided for three months or more. If you cannot afford to pay the court’s filing fee at the time you file your Petition, you can ask your attorney or the court clerk to file an Application for Waiver of Court Fees.

Utah law allows a person to file for divorce on a “no-fault” basis. The grounds for a no-fault divorce are usually stated in the Petition for Divorce as “irreconcilable differences.” The term “irreconcilable differences” means that, for one reason or another, you believe your marriage cannot continue. You do not have to allege that your spouse is at fault.

Utah law also allows a person to file for divorce on the basis of “fault.” If you file a Petition for Divorce on the basis of fault, you are required to state that your spouse is at fault in causing the dissolution of the marriage.

## WHAT HAPPENS IN DIVORCE PROCEEDINGS?

The divorce procedure begins with the filing of the Petition for Divorce as noted above. The requesting party is the Petitioner and the responding party is the Respondent.

The Petition states your proposal for custody and visitation, including a parenting plan, child support, request for alimony, division of property, allocation of debts and liabilities, and any other matter you and your attorney, if you have one, determine should be included. The Petition also sets forth the factual situation and the reasons for the divorce (the grounds), any agreements which you and your spouse have already made (including Pre-Nuptial or Post-Nuptial Agreements and Stipulation and Property Settlement Agreements, if applicable), and other items which must be resolved between the parties. The Petition may include a request that the other party pay your attorney fees and costs.

After the Petition is filed with the court, your spouse must be given “notice” of the divorce action by being “served” with a summons and a copy of the Petition as filed. This is called service of process. Service of process is complete when a Sheriff, Constable, or other person (other than the Petitioner) who is at least 18 years old hand-delivers the summons and a copy of the Petition to your spouse. The sheriff or constable will usually charge a fee for serving process. After service, the responding party has twenty (20) days in which to file an “answer,” often called a Response to the Petition, with the Court. If the responding party does not reside in the State of Utah, the summons must allow him thirty (30) days to file his response. The Respondent responds to each paragraph of the Petition and states what the Respondent agrees and disagrees with, usually by stating that the responding party admits or denies the statements contained in the Petition. A responding party may also file a counter-claim, or Counter-Petition for Divorce. If the responding party files a Counter-Petition, the Petitioner must reply to each paragraph of the Counter-Petition and state what the Petitioner agrees and disagrees with, and must file that reply within twenty (20) days of receiving the Counter-Petition.

If attorneys are representing the parties, they will meet for an Attorneys’ Planning Meeting. One attorney cannot represent both parties to a divorce, so each party must either

retain (hire) her or his own lawyer, or represent himself or herself, called “pro se” representation. During the Attorneys’ Planning Meeting, the lawyers will set agreed upon deadlines to complete the various stages of your divorce proceeding, and will submit this schedule to the court.

The attorneys may engage in legal “discovery” early in the divorce process. Discovery involves learning the facts and information about the case which support the other side’s position. For example, your attorney may want to find out how much money is in a retirement plan, bank accounts, or a business partnership, or how much money your spouse is earning. She will prepare written interrogatories and requests for documents, or will subpoena the information from third parties, all of which are discovery tools. If there is a fight over custody, discovery can include a custody evaluation, which is a formal procedure where a social worker or psychologist is hired by the parties to make an expert recommendation to the court concerning the extent to which each parent should be involved in the children’s lives, particularly with respect to which parent the children will live with. A custody evaluation usually requires one or both of the parties to pay the evaluator for his or her services, which include research and preparation of a report, and in some cases, testimony at a trial.

If the divorce is simple, particularly if there are no children and minimal assets, the divorce may be resolved at a Settlement Conference or in Mediation. The parties may agree to meet together with or without their attorneys to informally discuss settlement. If no agreement is reached between the parties informally, they will be required to meet at least one time with a mediator prior to obtaining a trial date. The parties may meet with a mediator, either with or without their attorneys, to discuss settlement. There is typically a fee for using the mediator’s services, paid by one or both of the parties at the time of mediation. If the parties are not successful in reaching settlement at an informal meeting or with a mediator, the court requires that all the parties attend a Pre-Trial Settlement Conference with a Court Commissioner to discuss disputed issues before a trial is scheduled. Many divorces settle through this procedure.

If the parties reach a settlement, a Stipulation and Property Settlement Agreement is drafted by the attorney for one of the parties. The agreement document is signed by

the parties, notarized and filed with the court, together with Findings of Fact and Conclusions of Law, a Decree of Divorce, and any other required documents. Again, in a simple, uncomplicated case the parties will frequently discuss and agree on terms before any legal documents are filed. This is often called an “uncontested” divorce.

In an uncontested divorce, the Petitioner prepares a Petition for Divorce, which contains all agreed terms. The Respondent receives a copy of the Petition and signs a short legal document called an “Acceptance of Service, Waiver, and Consent,” which is notarized and filed with the court. The effect of this document is to inform the court that the Respondent accepts and agrees to the terms set forth in the Petition and will not file an answer. The court will then allow the Petitioner to submit Findings of Fact and Conclusions of Law and a Divorce Decree based on the terms of the Petition, and will grant a divorce.

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A large percentage of divorces in Utah do not go to trial. Most divorces are uncontested, or negotiated and settled before trial. It is still very important that you obtain advice from a qualified attorney to determine your individual rights in the process and what you may be entitled to. Even if you believe that it is a “simple” divorce and your spouse is being extremely agreeable, it is very important to at least consult a lawyer to review all agreements before they are finalized. Once a divorce is final, it is difficult to have terms of the Decree of Divorce modified or changed at a later time. It is also unwise to make any agreements with your spouse which are not fully set out in writing.

Most divorces involve much negotiating and dialogue between the parties through their attorneys. The goal is to reach a settlement agreement which is fair and equitable to both parties. Many laws and requirements govern the various issues in a divorce, and you should expect to seek the professional service of an attorney to help you understand this important, personal legal process. Many laws help the process of divorce negotiations, and a competent attorney can help you gain the benefit of these laws.

Most divorce attorneys will work hard to negotiate and settle a case before trial. Most judges will hold a second Pre-Trial Settlement Conference to assist the parties in reaching their own agreements. Settlements worked out by the parties

to a divorce are much more preferable than judge-decided settlements that result from a trial, because the parties have been involved in crafting their own agreement and can abide by that agreement better than a court-imposed resolution of the issues.

## WHAT ARE THE GROUNDS FOR DIVORCE IN UTAH?

A judgment of divorce may be granted based on the following “grounds” (or reasons): impotency, adultery, desertion, failure to provide the necessities of life (“abandonment”), habitual drunkenness, conviction of a felony, physical or mental cruelty, irreconcilable differences, insanity, or living separately under a Decree of Separate Maintenance for three years. Utah has a fault-based system of divorce, with the important exception being the grounds of “irreconcilable differences,” which is a “no-fault” basis for divorce. The granting of a divorce terminates the marital relationship for both parties, no matter who the divorce is awarded to. The issue of fault, or who caused the divorce, is irrelevant to most issues that must be decided in a divorce. A statute effective in 1995, however, now allows the court to consider the fault of the parties in determining alimony. Usually, the court does not consider the fault of the parties and is required to make equitable orders to divide the property and debts of the parties and to decide custody based on the best interest of the children. The goal of a divorce is not to punish a guilty party.

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As a general rule, most divorces today are brought on the grounds of irreconcilable differences and fault does not need to be proven. This means that you do not have to reveal to a judge or the court why you want your marriage dissolved, simply that it cannot continue because of differences that cannot be resolved.

## HOW LONG DOES IT TAKE TO GET A DIVORCE IN UTAH?

In all divorce cases where there are no minor children, a Decree of Divorce cannot be issued until at least ninety (90) days have passed from the date of filing of the Petition. A judge may shorten the waiting period upon appropriate motion. One reason for shortening the waiting period could be



a statement from your treating doctor or therapist stating that it is in your best interest to complete the divorce as soon as possible. The waiting period is generally observed to be sure a divorce is not completed in haste, and to give the parties time for reconciliation if that is possible.

In divorces involving minor children, a Decree of Divorce can be granted at any time once there is an agreement or default, and both parties have attended the mandatory divorce education class. Again, the court may waive the requirement to attend the divorce education class upon appropriate motion and good cause. Thus, it is possible for a divorcing couple with minor children who have made a settlement agreement, to become divorced in a matter of weeks, if all requirements are met.

After the judge signs the decree and it is noted in court records, the divorce becomes final without any further action by the husband, the wife, or the court. There is no waiting period between the time the divorce is granted and the date it becomes final.

There are no waiting periods for annulment or separate maintenance actions. If you moved to Utah today, filed an action for an annulment or legal separation tomorrow, and if you and your husband agreed on all terms, the action could be final within weeks.

### **HOW MUCH WILL A DIVORCE COST IN UTAH?**

The current filing fee paid to the court for a divorce petition is \$95.00 plus a \$2.00 fee for filing the required Vital Statistics form. These fees can be waived if you file an Application for Waiver of Court Fees and the waiver is approved by a judge.

The fee paid to a constable or sheriff for formal service of the divorce papers on your spouse (called service of process) is generally charged according to mileage and is usually about \$25.00 to \$40.00.

The most significant costs in a divorce are the fees paid to an attorney. Each attorney can charge her or his own hourly rate, and the amount varies based on the attorney's background, experience and whether they are working on their own or in a law firm. Some attorneys will charge a fixed fee for a simple, uncontested divorce. If finances are a problem, it is

important and appropriate for you to contact several attorneys to find one who will work within your financial limits. It is also important that you feel comfortable and compatible with the attorney you choose to hire.

A divorce case with several disputed issues can be costly to complete. If custody is in dispute, you may incur charges for a psychologist or custody evaluator, whose fees are in addition to your attorney's. If a divorce is contested, it is typical for each party to pay her and his own attorney's fees. Utah law does, however, allow a judge to order either party in a divorce case to pay some or all of the fees incurred by the other party, depending on ability to pay, the reasonableness of the fees, and other factors.

### **CAN MY HUSBAND STOP ME FROM GETTING A DIVORCE?**

One spouse cannot prevent the other from getting a divorce, but a resistant spouse can significantly stall the process. When someone contests a divorce, the disagreement usually involves finances, support, custody of children, or property division. Usually both spouses agree that there should be a divorce, but disagree on its terms. In Utah, a contested divorce usually takes much longer than the usual three months for an uncontested divorce. It will require a minimum of three months, and could be more than a year, because of the need for "discovery" and the court's crowded calendar.

### **WHAT IF MY HUSBAND WON'T ACCEPT THE DIVORCE PAPERS?**

Your husband does not have to sign and agree to the terms of the divorce petition for the divorce to proceed. If he will not voluntarily receive a copy of the petition and does not file an answer or other response with the court, he can be served formally by a sheriff or constable. Upon formal service, if he does not respond within twenty days (by filing an answer or other written response with the clerk of the court), your divorce can be granted with you receiving in the decree all of the things you asked for in your petition. Thus, a divorce can proceed even if your husband will not cooperate by responding to the papers after being formally served.



## **WHAT HAPPENS IF MY HUSBAND DOES NOT RESPOND IN ANY WAY TO THE DIVORCE PAPERS?**

If your husband receives the divorce petition and summons through formal service but does not file any papers in response, the divorce can be granted exactly as you have asked. Generally, the judge will question the reasonableness of the division of property, custody, child support, or alimony requested in your divorce petition unless there is a response of some sort from your husband.

## **IF MY HUSBAND DOES NOT LIVE IN UTAH, CAN I GET A DIVORCE HERE?**

A Utah court may enter a Decree of Divorce when the petitioner or respondent in a divorce action has been an actual resident of the county in Utah where the petition for divorce is filed for three months immediately preceding that filing. If your husband does not live in Utah and you qualify to file for divorce here, he can object to the divorce being pursued in Utah, but will need to present legally persuasive reasons for a Utah judge to decide that the divorce should not proceed in Utah.

## **CAN I GET A DIVORCE EVEN IF I DON'T KNOW WHERE MY HUSBAND IS LIVING?**

It is possible, although not easy to get a divorce even though your husband cannot be found. If, after you make a diligent search, you cannot find your husband so that he can be personally served with divorce papers, the court can proceed with the divorce action by giving permission to publish notice of the divorce action in a newspaper and/or to mail notice to your husband's last known address or to the address of relatives. If a divorce is granted without proof that your husband ever actually received notice of the divorce action, the Decree of Divorce is restricted to terminating the marriage, granting custody of the children who are in Utah, and disposition of marital property in Utah. The court cannot make any decision about property outside of Utah, child support, attorney's fees, or alimony in a divorce where notice is given by publication or by mail.

## **DO I HAVE TO ATTEND COUNSELING BEFORE I FILE FOR A DIVORCE?**

A judge in a Utah court *may* require some marriage counseling before a divorce is granted. The purpose of the counseling is twofold: to ascertain whether the marriage can be held together and, if not, to help prepare the wife and husband for their new roles as unmarried people.

Getting a divorce is an emotionally taxing experience for most people, especially when children are involved. An attorney can provide only legal advice, and a court can resolve only legal matters. Although it is not a legal requirement, you may wish to seek counseling to help you cope with the emotional and psychological aspects of divorce.

You should also decide who can best help you with the various problems involved in a divorce. When a lawyer is billing you at an hourly rate, it is wise to use him or her for legal matters and to rely on friends, family, or professional counselors for your non-legal, emotional and supportive needs.

## **DO I HAVE TO HIRE A LAWYER?**

A person may act as her or his own lawyer and may represent herself or himself in court. Because legal proceedings are quite specialized, complicated, and detailed, however, a person without legal training could have a difficult time with the technical procedures of the court. Most people do not know or understand the complexities of the law or comprehend all of the consequences of a legal proceeding. If, though, your divorce is simple and uncontested, you can handle it on your own.

The Utah courts provide an on-line do-it-yourself set of forms which you can complete to file for your divorce on your own. The forms and instructions are available at [www.utccourts.gov/ocap](http://www.utccourts.gov/ocap).

To protect yourself, you should at least consult with an attorney for guidance if you do not hire an attorney to handle your divorce. Some attorneys will act in a limited role to guide and counsel you through your divorce on a fee-for-service basis, which is less costly than full representation. It is appropriate for you to contact several attorneys to find one who will work with you on a limited legal services basis.

This handbook makes every effort to be accurate and authoritative, but it cannot provide specific legal advice, nor can it be a substitute for an attorney.

## **CAN I GET A LEGAL SEPARATION IN UTAH?**

Utah law does not specifically provide for a legal separation. You can, however, get what is called a Decree of Separate Maintenance, a court order which divides property and provides financial and other support without terminating the marriage. The order requires that the parties live separately, and it specifies who gets what property, who pays what support, which party is responsible for which bills, which children live with which parent, and so on.

A Decree of Separate Maintenance does not legally end a marriage, but to obtain a Decree of Separate Maintenance in Utah, a couple must go through a proceeding very much like divorce. A Decree of Separate Maintenance may stay in effect until the death of either party or until one or the other seeks a divorce. There is no limit to its duration. Once a Decree of Separate Maintenance has been in effect for three years, either spouse may use that fact as grounds for divorce.

Some women prefer a Decree of Separate Maintenance to a divorce in order to stay covered under their husband's health insurance policies and to retain their spousal inheritance rights. It is best to check with a lawyer and with your insurance company if these are reasons you want a Decree of Separate Maintenance instead of a divorce.

## **HOW DO I GET A DECREE OF SEPARATE MAINTENANCE IN UTAH?**

Similar to a divorce, you file a petition (or complaint) for a Decree of Separate Maintenance. In Utah, the statutory grounds for Decree of Separate Maintenance are the same for

both men and women and include the following:

A spouse has deserted you without good or sufficient cause, or

A spouse could support you but either neglected or refused to "properly provide for and suitably maintain" you, or

A spouse lives away from you through no fault of yours, or is sentenced to the state prison for a year or more.

There is no three-month residency requirement to seek a Decree of Separate Maintenance in Utah, but you must be a resident of the state (for no specified time period).

## **WHAT ARE THE LEGAL REASONS FOR AN ANNULMENT IN UTAH?**

An annulment is a court decision that a marriage was not valid at the time it took place. It means the marriage never existed legally, unlike a divorce, which dissolves a previously legal and valid marriage.

The two most common grounds for annulment are lack of capacity and fraud. Lack of capacity means that, for some reason, a person was legally incapable of marrying — for instance, he or she was under legal age, still married to another person, mentally defective, or so drunk that he or she didn't know what he or she was doing.

If fraud is asserted as grounds for an annulment, the fraud must go to the "essence of the marriage," which means it must directly affect the marriage relationship. The fraud must also be so serious that if the deceived party had known of it, she would not have consented to the marriage. In one Utah annulment case, for example, an annulment was allowed on grounds of fraud where the man did not tell the woman before they married that he was a convicted felon.

A marriage can be annulled in Utah if it is between parties of close kinship. This includes marriages between parents and children, brothers and sisters of half or whole degree, uncles and nieces, aunts and nephews, and marriages between first cousins, unless such cousins are over 65 years

of age or older, or if both are age 55 and either party cannot reproduce. If a marriage ceremony was not performed by an authorized person, or if one spouse has a communicable venereal disease, a marriage can be annulled.

## WHAT ARE TEMPORARY RESTRAINING ORDERS? HOW CAN THEY HELP ME?

A temporary restraining order is a court order sometimes issued as a part of a divorce action. The order can, for example, require your spouse to do or to not do some specific thing, such as move out of a house or stop using physical violence against you. A court may grant a temporary restraining order without letting your spouse (the person it affects) know about it until the order is officially delivered by the sheriff. A court will grant a temporary restraining order *only* when *immediate* and *irreparable* harm will be suffered unless the order is issued and served.

A temporary restraining order stays in effect for only ten days; and within those ten days, the court must have a hearing, or meeting, with you, your spouse, and your attorneys, if any, as to whether the temporary restraining order shall continue in effect. This hearing is usually called a “hearing on an order to show cause,” which, in our example, is held to permit your spouse to give reasons why the temporary restraining order should not be continued. At that hearing, your spouse has a chance to explain his or her side. The court is reluctant to take long-term action against anyone without letting them have a chance to tell his or her side of the story.

If the temporary restraining order is continued in effect it is called a “preliminary injunction.” The same kinds of orders (to vacate the house, give up custody of the children, pay temporary support, etc.) are found in both temporary restraining orders and preliminary injunctions. A preliminary injunction is effective for the pendency of an action, that is, until a final decree is entered. When the decree is final, a permanent injunction is granted within the decree. For example, a permanent injunction might state that a party is “permanently enjoined and restrained from visiting the petitioner’s home or her place of employment, and from striking, harassing, or harming her in any manner.”

A temporary restraining order should not be confused with a temporary order. A temporary restraining order is

granted without notice when immediate and irreparable harm is threatened; it is served on your spouse. A temporary order is usually granted after notice is given to your spouse and after both sides have had a chance to be heard. It typically spells out temporary arrangements for child custody, support, who will pay what bills, etc., while the divorce is pending.

## WHAT HAPPENS IF A COURT ORDER IS IGNORED?

If a person does not obey a temporary restraining order, or other temporary or permanent order of the court, you must begin legal proceedings to enforce the order. The judge or court issuing the order can punish violation of the order by ordering imprisonment, community service, payment of a fine, or other specific performance by the person violating the order. For example, if a husband fails to return personal property as ordered, the court may put him in jail until it is returned, or require him to pay to the wife the reasonable value of the property.

Usually, if a party must go back to court to enforce a court’s order, the judge will be strict with a person who has failed to comply with the order, unless the person has violated the order for a very sound reason. It is also possible for a judge to require the violating party to pay the legal costs and attorneys fees incurred by the party who had to return to court to have the order enforced.

## HOW DOES THE JUDGE DECIDE WHO GETS CUSTODY OF THE CHILDREN?

There are no set rules. The judge has the power under the statutes to award custody of children under eighteen in a “just and proper” way. Other key phrases are “as may be equitable” and “the best interests of the child.” The law says a judge should consider the best interests of each child and the past conduct and demonstrated moral standards of each parent. A court will also ask who has been the child’s primary care giver.

The best interests of the child can be assessed by relying on, among other things, a custody evaluation conducted by an expert psychologist or other professionally qualified evaluator. This expert will conduct an in-depth evaluation,

considering factors including: the preferences of the child; keeping siblings together; the strength of the child's bond with one or both parents; the general interest in continuing previously determined custody arrangements if the child is well adjusted; the moral character and emotional stability of the parents; duration and depth of desire for custody; ability to provide personal rather than surrogate care; impairment of functioning as a parent through drug abuse, drinking or other cause; reasons for a parent having relinquished custody in the past; the parent's religious compatibility with the child; kinship, including step-parent status; and financial condition of the parents.

The law states that a judge may discuss with a child of any age her or his desire as to which parent the child might live with. It is clear in the law, however, that the preference of a child is not controlling and is only considered as one of many custody determination factors. Typically, as a child gets older, usually in pre-teen or teen years, the child's preference becomes a more important factor, especially where there are threats to run away or otherwise rebel against the parent with custody.

## WHAT ABOUT JOINT CUSTODY?

Joint custody has two distinct meanings. Joint legal custody means that the parents make important or major decisions about their child together, such as decisions concerning the child's education, health, and religion. Joint physical custody, on the other hand, means that the parents have the child living with each of them for approximately equal amounts of time during a year. Usually, when parents have joint legal custody, one parent has sole physical custody and the other parent has the child for regular parent time (sometimes called visitation).

A court will order joint legal custody when it is in the best interests of the child and the parents appear capable of implementing joint legal custody. It would be unusual for a judge to enter an order of joint legal custody if the parents did not demonstrate an ability to cooperate concerning their child. A joint legal custody order implies a higher than usual level of parental communication and involvement after the divorce. Joint legal custody is often a reasonable compromise between two involved parents, neither of whom wants to feel like they have "lost" custody. Joint legal custody can be

changed by a later court order on the request of either parent, if the parent believes the situation has become unworkable or inappropriate, and a judge so finds.

Joint physical custody will not occur without joint legal custody. Parents who succeed in having full joint custody of a child will demonstrate that they are particularly skilled at cooperating. These parents must be able to provide stability for the child, particularly with respect to schooling, and must show this by developing and agreeing upon a comprehensive parenting plan that sets forth details of where a child will reside at what times throughout the year, and the parents' intent with respect to their relationships with each other and with the child.

An important aspect of joint physical custody is its effect on child support. Each parent remains responsible for her and his share of financial support for the child, but it is possible that neither parent makes a child support payment to the other, because the child is living an approximately equal time with each parent. A separate calculation for child support is used for joint physical custody, and the amount of time that a child spends living with each parent is used to determine whether any child support payments are made.

## WHAT IS PARENT TIME?

Utah law uses the term parent time instead of the term visitation. The term parent time recognizes that a parent and child do not become mere visitors because of a divorce. When parents are no longer married or otherwise together, a child spends time with each parent in the parent's separate life.

In a court document, parent time is often referred to in terms of the non-custodial parent having parent time with a child at reasonable times and places as the parents agree. The custody circumstances can vary, and parent time will be established for each unique situation. If parents cannot agree to a parent time schedule, they can choose to follow a schedule set forth in detail in the Utah Code, also called the statutes.

## **CAN I LOSE CUSTODY OF MY CHILD BECAUSE I AM A LESBIAN?**

In custody cases, the primary consideration is the best interests of the child, and a court must consider all relevant factors. The sexual orientation of a parent is not one of the custody factors, although courts have considered it relevant in analyzing the moral character or stability of a parent. The Utah Supreme Court, in a 1980 case in which the wife was a lesbian, held that sexual preference in and of itself is not enough to deprive a parent of custody or visitation rights. In 1996, the Utah Supreme Court ruled that a mother's status as a lesbian was irrelevant to her parenting abilities, but was a negative factor under a moral fitness standard in light of the fact that, while she was still married, the mother was cohabiting with another woman in a relationship. The Court found that such cohabitation, regardless of the parent's sexual preference, could be found to be a negative moral factor.

## **WHAT ABOUT CHILD SUPPORT?**

Child support is addressed in the chapter in this book concerning children.

## **TAX MATTERS: DEPENDENT EXEMPTIONS, TAX IMPACT OF CHILD SUPPORT AND ALIMONY**

In deciding which parent should be awarded the right to claim a child as a dependent for federal and state income tax purposes, the court will consider the following: the relative contribution of each parent to the cost of raising the child, and the relative tax benefit each parent would realize by claiming the dependent. A parent who is required to pay his share of child support to the other parent and is behind in his payments will not be given the right to claim the child as a dependent.

Child support is not taxable to the party receiving it and is not deductible for the party paying it. The party paying child support cannot require an accounting from the receiving parent of how child support is spent. It is the receiving parent's decision as to how to spend that money, as long as it is spent for the benefit of the child for whom it is paid.

Alimony is considered income under the Internal Revenue Code. Thus, the party receiving alimony must report it as income to be taxed, and the party paying alimony can deduct the amount paid.

## **HOW ARE DEBTS AND PROPERTY DIVIDED IN UTAH?**

In Utah, the property and debts of a husband and wife are identified as either their separate property/debt, or marital property/debt. In a divorce, each spouse maintains separate ownership and responsibility for his or her separate property and debt; marital property and debt are divided between the spouses "equitably," which means the court uses its best judgment make a fair division. Generally, Utah courts attempt to equalize division of marital property and debt between the spouses (even though "equitable" and "equal" do not have the same meaning).

It is important to remember that while the court can divide the debts between the two of you, your creditors can still pursue either one of you on any debt that the two of you incurred together, that is, jointly. Creditors can also pursue each former spouse for any debt that was incurred for family expenses. Refinancing and closing joint accounts can help prevent an unexpected debt collection action.

## **WHAT IS ALIMONY?**

Alimony is money paid to a divorced spouse, and is sometimes referred to as spousal support. The purpose of an alimony award is to enable the receiving former spouse to maintain as closely as possible the standard of living enjoyed during the marriage and to prevent them from becoming a public charge, such as going on welfare.

When deciding a question of alimony, a court will consider several factors. Among those are whether the spouse who earns the most money can afford to pay alimony; and whether the receiving spouse has a need for alimony, and if so, how much. A spouse's need will be determined by reviewing the standard of living achieved in the marriage. Unless there are special circumstances, such as very young children or health problems, the court will expect everyone to be employed to the best of their ability. Alimony can be



granted for a limited period of transition or rehabilitation, while a spouse attends school or other training to acquire job skills or otherwise become employable.

In Utah, the law permits a party to go back to court to ask for alimony if circumstances have changed substantially. For example, a divorced woman might seek alimony if her health declined to the point where she could not keep a job.

### **HOW LONG IS ALIMONY PAID?**

How long alimony is paid depends on the unique circumstances of each case. The law states, however, that alimony cannot be ordered for a period longer than the marriage lasted, absent extenuating circumstances. Extenuating circumstances are most frequently related to health issues for the party receiving alimony.

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Alimony ends automatically upon the remarriage or death of the recipient former spouse. Alimony will also end when the recipient former spouse cohabitates with another person. Cohabitation with another person is defined in the laws of Utah as “living together in an intimate relationship” without the sanction of a legal marriage, and can apply to a same-sex relationship.

### **WHAT DOES A DIVORCE DO TO MY WILL AND MY FORMER SPOUSE’S WILL?**

By law, a divorce nullifies any provision of a will that devises, bequeaths, or gives the former spouse property. After a divorce, the parties should prepare new wills to prevent problems that may arise when portions of a will are invalidated.

## **8 PHYSICAL AND MENTAL HEALTH; LIVING WILLS**

### **HEALTH CARE**

American health care has changed radically in the last decade, and changes continue to occur at a lightning pace. Traditional health care is a thing of the past; we cannot be passive recipients of health care services, as our parents may have been. In a health care system long directed to and controlled by men, the unique health needs of women have often been overlooked. If women want to receive adequate care, we must take the initiative and be responsible for our own health care decisions. Good decisions cannot be made without an adequate understanding of our health care options.

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### **WHAT CAN I EXPECT FROM MY HEALTH CARE PROVIDER?**

First and foremost, your doctor or other health care professional is legally required to provide you with “humane care and treatment” that meets standards generally accepted by professionals in the field. As a patient, you should also expect your health care providers to be responsive to your concerns and to respect your beliefs and preferences about your health care needs. A health care professional is required to obtain informed consent from you before beginning a treatment or procedure. To give informed consent, you must understand the nature, consequences, risks, and benefits of your selected treatment and of any alternative treatment options. Your doctor has a legal and ethical obligation to be sure that you are informed about and understand your options, and you should never hesitate to ask questions about the information provided to you.

You have a right to expect that your health care provider will keep information regarding your health and medical care confidential. No one else has a right to obtain information regarding your health from your doctor without your consent. Unless you have clearly agreed that your medical record may be released to someone else, it is to be kept private. Likewise, your medical record cannot be withheld from you.

## REPRODUCTIVE HEALTH

The most basic elements of preventive reproductive care for women are pap smears and mammograms. These two procedures help your doctor diagnose cervical and breast cancers in early stages, when your chances of a complete cure are greatest. Both of these cancers are prevalent and potentially life-threatening. Talk to your doctor about how often and at what age you need these tests. Many health insurance programs will pay for an annual pap smear and for regular mammograms. If you do not have health insurance that covers these tests, you may be able to get them at little or no cost. Various private and government sponsored groups perform the procedures with charges based on your ability to pay. For further information, contact 211 Information and Referral, the health services office or health department of your county, the state Community and Family Health Services Division (801-538-6161), or the Planned Parenthood clinic closest to you.

Reproductive health raises unique health concerns and responsibilities for women. Decisions about pregnancy and child-birth affect women's lives, as well as the lives of their children. Women have the right to learn about and make their own decisions about birth control, pregnancy, and childbirth. Women also have a corresponding obligation to exercise their rights responsibly.

## BIRTH CONTROL

There are many methods of birth control available for use in the United States. The most effective methods, including birth control pills, Norplant, Depo-Provera, IUDs, and diaphragms, require a doctor's prescription. Other methods, such as condoms and spermicides, are less effective, but are available over the counter.

Utah law does not restrict women who are married or over the age of eighteen from obtaining contraceptives. Typically, teenagers do not need a parent's consent to receive birth control services. Parental consent is, however, required for an unmarried minor to use public funds to obtain prescription birth control.

Many private health insurance programs will pay for prescription birth control. If yours does not, or if you are uninsured, you may be able to obtain contraceptives at little or no cost. For example, Planned Parenthood, an organization with clinics across the state, performs examinations and supplies prescription contraceptives, with your cost based on your ability to pay.

An alternative to the contraceptive methods listed above is sterilization (usually tubal ligation, a surgical procedure in which the Fallopian tubes connecting the ovaries and the uterus are severed). Because sterilization is generally irreversible, Utah law requires that the patient be over eighteen and capable of giving informed consent. A person who is younger than 18 may choose sterilization only if she is married or emancipated and capable of giving informed consent.

## WHAT ARE MY OPTIONS IF I BECOME PREGNANT?

A pregnant woman has a number of options regarding the progress and outcome of her pregnancy, and a variety of resources available, financial and otherwise, to assist her in making and carrying out her decisions.

## WHAT IF I CHOOSE TO CARRY MY BABY TO TERM?

If you have chosen to continue your pregnancy and carry your baby to term, there are resources available to assist you in caring for your health and the health of your unborn child. Because your actions and decisions during pregnancy strongly affect both you and your child, state law requires the Department of Health Services to provide prenatal and maternity care to women who would otherwise not have access to such services.

## PRENATAL CARE

Prenatal care is extremely important to the health of both mother and baby. Proper prenatal care can prevent a wide range of problems for the baby, including miscarriage, some birth defects, and premature birth, as well as conditions that pose a threat to the mother, including high blood pressure and placenta previa (a condition in which the mother may bleed to death before or during delivery if proper precautions are not taken). For that reason, a pregnant woman should contact a doctor or midwife as soon as she knows or suspects that she is pregnant. If you need information about prenatal services, or if you are unable to pay for prenatal care, help is available from Utah's Baby Your Baby program, at 1-800-826-9662. You may also call the Health Services office or Health Department for your county, which should be listed in the blue pages at the front of your phone book.

## DELIVERY OPTIONS

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You have the right under Utah law to decide how, where, and by whom your baby is delivered. You may choose to have your baby in a hospital, a birthing center, or at home. Your baby may be delivered by a doctor, a nurse-midwife, or any other person you choose. However, if for some reason your pregnancy is considered "high-risk," you should make sure that the delivery option you choose includes back-up and emergency care in case a serious problem arises. Your delivery decision should not be made solely on the basis of affordability. As with prenatal care, financial assistance is available. The Department of Health Services is required to provide maternity care to you if you are uninsured, do not qualify for Medicaid assistance, and cannot otherwise afford maternity care. Again, if you need help making decisions about or paying for maternity services, call Baby Your Baby at 1-800-826-9662, or your county Health Services office or health department.

## CAN I CHOOSE TO TERMINATE MY PREGNANCY?

The United States Supreme Court has ruled that, if you are pregnant, you have the constitutional right, limited by certain interests of the state, to have your pregnancy aborted. Because the state has a legitimate interest in protecting both

the potential for human life and the health of the pregnant woman, it may impose limited regulations on abortions.

Your right to an abortion changes as your pregnancy progresses. Before the fetus is viable, or before the fetus could live outside the mother's body, the state's ability to control abortions is limited. Only a physician can determine viability in a particular case, since each pregnancy differs. Rapid advancements in medical knowledge and technology are resulting in earlier viability. After the fetus becomes viable, the state may strictly regulate abortions. For more information to help you decide whether an abortion is right for you, contact the Planned Parenthood clinic in your area.

## WHAT ABOUT ADOPTION?

If you are pregnant and feel unable or unwilling to care for a child, but do not wish to terminate the pregnancy, you may place your child for adoption. If you are unmarried, state law gives you the right to make timely and appropriate decisions regarding your future and the future of the child. A birth mother may not consent to the adoption of her child or relinquish control or custody of her child until at least 24 hours after the birth of her child.

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Under the law, an unmarried mother has a right to privacy with regard to her pregnancy and adoption plan, and has no obligation to disclose the identity of the biological father before or during the adoption proceedings. An unmarried mother also has no legal obligation to tell the biological father that she is pregnant, or to inform him of the birth or the adoption, except in certain circumstances, which are specified in Utah's adoption laws. The consent of an unmarried biological father to the adoption of the child is necessary only if he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth. In order to do so, he must: (1) if he is aware of the pregnancy, pay "a fair and reasonable amount" of the costs of the pregnancy and delivery, depending on his income, and (2) file with the court an affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth. Information regarding adoptions is available from a variety of sources, including the following nonprofit groups: Children's

Aid Society of Utah (1-800-273-8671), the Children's Service Society (801-355-7444), Catholic Community Services (801-977-9119), Utah Adoption Services for Women (801-262-7999), and LDS Social Services (1-800-537-2229).

### **SEXUALLY TRANSMITTED DISEASES (STDs)**

Sexually transmitted diseases are considered a public health problem, so Utah law, in some cases, requires that STDs be reported to public health officials. A person with syphilis, gonorrhea, lymphogranuloma inguinale (venereum) or chancroid can be required to report for treatment until cured. Treatment will be provided free of charge for those who cannot afford to pay for it.

You may be tested for HIV anonymously. You can obtain information from any pharmacy on how to arrange a test. You should also note that if you are the victim of a sexual assault, you can, under certain circumstances, require your attacker to be tested for HIV.

### **MENTAL HEALTH**

Mental health problems include conditions that range from very mild to totally incapacitating. Unfortunately, widespread misunderstanding about mental illness and the stigma attached to its victims prevent many people from asking for the help they need. For many of these people, appropriate prescription medication alone may alleviate their mental health problems, allowing them and those around them to lead happier, more productive lives. As a society, we have a collective interest in providing services to address individual mental health needs, regardless of ability to pay. Consequently, both state and federal governments offer assistance to individuals in need of mental health care.

### **WHAT MENTAL HEALTH SERVICES ARE AVAILABLE TO ME?**

A person suffering from mental health problems can receive help from a variety of sources. The nature and severity of your problem should determine the type of care you seek. For example, a person who is threatening to hurt herself or someone else needs immediate crisis intervention. In such a case, a suicide prevention hotline, a hospital

emergency room, or a psychiatric care facility might offer appropriate assistance. On the other hand, a person who is experiencing mild depression does not need crisis care, but would likely benefit from medication or psychological therapy. An entire range of services is available through private and governmental care providers.

Private mental health care can be very expensive, but is covered, at least partially, by many health insurance plans. If your insurance plan offers no coverage or insufficient coverage, you still have access to mental health services. Utah law provides community mental health services for which you may be eligible if you are unable to obtain private care because of geographical, financial, or other limitations. Although fees may be charged for such care, you cannot be denied these services because you are unable to pay. In addition, federal law creates a system of Comprehensive Mental Health Centers, which also offer a broad range of services.

### **WHAT RIGHTS DO I HAVE IF I SEEK MENTAL HEALTH CARE?**

Whatever type of mental health care you seek, Utah law entitles you to "humane care and treatment" that meets the standards generally adhered to and accepted by professionals in the field. You should expect your care provider to *clearly* explain your condition and options available for treatment, as well as fees and possible payment arrangements.

### **IF I SEEK MENTAL HEALTH CARE, COULD I BE HOSPITALIZED AGAINST MY WILL?**

Unless a mental health professional determines that you pose an imminent danger to yourself or someone else, you have an absolute right to refuse any treatment to which you are opposed. You cannot be committed to a hospital without your consent unless there is reasonable basis to believe that you are mentally ill and likely to injure yourself or others, if not restrained immediately. It is extremely unlikely that you will be committed against your will after voluntarily seeking help. The fear of involuntary hospitalization should not deter you from getting the mental health care you need.

## PAYING FOR HEALTH CARE

### WHAT ABOUT PAYMENT?

There are a number of sources to which you can turn for help in paying for needed health care. For example, state law *requires* the Department of Health Services to provide maternal and child health services, as well as services to crippled children, to individuals who need such services and cannot reasonably obtain them from other sources. Some children's health services are also available through the public schools. Regardless of your circumstances, you and your children should be able to obtain at least basic health care services.

### PRIVATE HEALTH INSURANCE

Perhaps the most obvious source of health care payment is private health insurance. If you have coverage under a private insurance plan, through your employer, your spouse's employer, or otherwise, your insurer should provide you with a brochure or booklet explaining the terms of your coverage. You should take the time to carefully read any materials you receive from your insurance company, so that you understand the steps you may be required to take to qualify for coverage. For example, many insurance plans require pre-authorization of certain procedures, and some limit coverage if you choose to see a doctor who is not on the insurance company's list of preferred providers.

Likewise, you should understand what your insurer has agreed to provide to you. Because insurance plans are administered by people, claims are sometimes denied by mistake. If you have been denied coverage for services you believe are included in your plan, you should contact your insurer and explain your concern. A written letter of complaint is often more effective than an appeal made over the phone, and sometimes this simple action will result in the reconsideration and payment of your claim.

If, however, your insurer continues to withhold payment for the service, you may seek the help of an attorney. If a court determines that your insurer deliberately and wrongfully denied coverage of your claim, it may require your insurer to pay punitive damages. The amount of these damages is usually determined by a jury, and does not depend on the

size of your claim. For this reason, you should not hesitate to contact an attorney even if your claim is small.

Since July 1997, insurance companies cannot exclude coverage for a pre-existing condition unless you have received medical attention for that condition in the six months prior to the policy's effective date. In addition, if your policy is part of a group insurance plan, such conditions may be excluded for no longer than twelve months, or eighteen months for a late enrollment. Moreover, pregnancy cannot be excluded as a pre-existing condition.

Insurance companies are also now required to pay for a forty-eight hour hospital stay following the birth of a child. Similarly, if you have a newborn or child placed for adoption, your insurance provider cannot exclude coverage for pre-existing conditions for that child.

Federal law now also prohibits an insurance company from terminating coverage unless the group or the individual chooses to terminate it.

### HEALTH MAINTENANCE ORGANIZATIONS

In recent years, health maintenance organizations (HMOs) have become an increasingly popular source of coverage for medical expenses. HMOs work to reduce health care costs, thereby allowing them to offer lower premiums. HMOs may therefore restrict your health care options. For example, you must choose a primary care physician who is part of the HMO, and you cannot visit a specialist unless your primary care physician refers you to one. Your primary care physician becomes, in effect, a mediator between you and the HMO. She should be willing to go to bat for you if the HMO denies coverage for a procedure or service she believes you need. To that end, you should carefully select your primary care physician.

Because HMOs are very attentive to cutting costs, you may need to be more aggressive in dealing with your HMO than with a private health insurance company. You should study the HMO's plan carefully so that you follow its rules. Becoming familiar with your plan will also help you know if you have wrongfully been denied coverage.



## CHARITY CARE

You should be aware that in a life-threatening situation, a hospital emergency room cannot refuse to provide care simply because you are unable to pay. You should not hesitate to seek emergency care if you need it.

In addition, a number of groups in Utah offer medical care to children whose parents are otherwise unable to pay for services needed. Some such groups are listed in the resource section of this handbook.

## WHAT ARE MY RIGHTS IF I AM INJURED OR HARMED BY MY HEALTH CARE PROVIDER?

If you believe you have suffered an injury at the hands of a health care provider, you should consult an attorney. You may have a legal claim for medical malpractice. While a bad result does not necessarily mean that malpractice was committed or that your health care provider was at fault, your attorney will help you determine whether you have a claim for which you may be compensated. Many attorneys offer free consultations to help you assess the strength of your claim. If an attorney believes you have a good chance of prevailing in your claim, she may be willing to accept your case on a contingency basis. In such a case, you would be required to pay no fees unless you are awarded and collect money. Each contingency agreement differs, but you may be required to pay the actual costs of litigation as you go, so you should make sure you understand your financial obligations.

## ADVANCE HEALTH CARE DECISIONMAKING

The recent case of Terri Schiavo highlights the need for advance health care planning.

Advance care planning is always a work in progress. That is because circumstances and lives change over time. Even values and priorities can change, depending on the circumstances. Documents that instruct your health care provider about what you do—or do not—want done in certain circumstances, or who should make decisions for you if you cannot make or communicate decisions about your health care, are called advance directives.

While advance directives are important in increasing the chances that your end-of-life wishes will be honored, the forms do nothing if you do not think first about your preferences or if you do not communicate your wishes to your family and your health care agent.

To clarify your end-of-life care preferences you need information. First, you need an understanding of your prognosis. What is the condition? How long are you likely to live with treatment? Without treatment? What is the normal course of this disease?

Second, you need information about what medical treatments can do, and about their side effects. You need to know: 1) Will the option make me feel better or worse? 2) What is the success rate, and how is success defined? 3) Can the procedure be done on a trial basis and can it be stopped if the results are unacceptable? 4) If I were to die during treatment, how would it affect choices? For example, would it mean dying in the hospital and not at home?

Third, good advance care planning requires an understanding of what is important to you. If the ability to communicate with loved ones is your primary goal, a medical intervention that prevented you from communicating might not be appropriate. What is your philosophy of life? What are your spiritual values? These factors will drive your choices. Knowing your values will help your family to make decisions on your behalf, if they are forced to.

Finally, recognize that decisions are contextual and you can always redirect care, depending on the circumstances. For example, you may have a terminal disease and not want aggressive treatment, but you may choose certain medical treatments to keep you alive to see the birth of a grandchild.

On the other hand, you may fight a serious illness with every ounce of energy and resources at your disposal and with the resolve that you would never give up the fight; but the time comes when you are ready to focus on the quality, not quantity, of life. At that time, you may reject curative treatments that could extend life if they have too great an impact on your ability to live the way you want to live.

Documents, such as the Tool Kit for Health Care Advance Planning, available at [www.carefordying.org](http://www.carefordying.org) or by calling 801-892-6615, can help you to think about what end-of-life decisions you might choose, and how you would go about making the choice.

Even if you are healthy and not facing a life-threatening illness, working through the Tool Kit or a similar document can help you to think about how you would make life-and-death decisions. It can also be a way to help you communicate your wishes to the health care agent who would speak for you if you were to suffer a sudden, catastrophic illness or injury that left you unable to make your own decisions.

Once you work through this process, you are ready to think about completing advance directives.

In the state of Utah, the law recognizes three advance directive forms: Directive to Physicians and Providers of Medical Services (Living Will), Directive for Medical Services after Injury or Illness is Incurred (Medical Treatment Plan), and Special Power of Attorney for Health Care (this is how you designate your health care agent or proxy). These forms are located at the end of this guide. In addition, Utah uses the Physician Order for Life-Sustaining Treatment (POLST) form.

## LIVING WILL

The Living Will is a way to communicate end-of-life preferences in advance. For example, if you would refuse a blood transfusion, even if doing so meant that you would die, a completed Living Will might help to assure that your directive is honored.

Living Wills have drawbacks. Under Utah law, a Living Will is effective only after a series of conditions are met. As a practical matter, it is unusual that life support is withdrawn because all of these conditions have been met. Living Wills also lack the context that is so important in end-of-life decisionmaking. If you were to sign Utah's form in 2004 as a healthy 57-year old, the form, by itself, would be of little help to a health care provider caring for you ten years later after a stroke rendered you unable to communicate.

## SPECIAL POWER OF ATTORNEY FOR HEALTH CARE

Health care providers prefer the Special Power of Attorney for Health Care instead of a Living Will. The Special Power of Attorney allows you to designate the person who you want to make your decisions for you, in the event you are unable to make decisions for yourself.

A living, breathing person who knows how you view your current health status, how you make decisions, and what is happening in your life is a better source of information about your current wishes and desires about end-of-life care than a form written by the Utah Legislature and signed by you.

Keep in mind, however, that you put your health care agent in a terrible bind if he or she has to make end-of-life decisions for you, but does not know what your wishes are. Communication of your wishes, goals, and values to your health care agent is necessary.

## UTAH'S POLST FORM

The Utah Department of Health recently implemented use of the Physician Order for Life-Sustaining Treatment, or POLST for short.

The POLST form contains detailed instructions about what care you do or do not want at the time of signing. Unlike a living will, a POLST form is not contingent on some future event happening before it is honored. In addition, the POLST form is a doctor's order that health care facilities are obligated to follow.

If you do or do not want resuscitation, feeding tubes, internal ventilators, or antibiotics to treat life-threatening illnesses, you may choose to work with your doctor to complete a POLST form.

## WHAT TO DO WITH YOUR ADVANCE DIRECTIVE

First and foremost, give the original Special Power of Attorney, your Living Will, and your POLST form to your health care agent. Do not put the original documents in a safe

deposit box or other secure location. If you have a terminal condition and you do not want life-sustaining measures, give a copy of your Living Will to the hospital closest to your home, a nursing home to which you are admitted, or to any hospital to which you may be admitted.

## **FIVE TIMES TO RE-EXAMINE YOUR ADVANCE DIRECTIVES**

In order to keep your advance directives truly in line with your current health care desires, you should re-examine them on at least the following occasions:

- Before each annual physical exam.
- At the start of each decade of your life.
- After any major life change—such as a birth in the family, marriage, divorce, re-marriage, and especially after the death of a loved one.
- After any major medical change—such as being diagnosed with a serious disease or terminal illness—or if such conditions worsen.
- After losing your ability to live independently.

## **IF YOUR WISHES CHANGE**

You can make a new advance directive if your wishes change. To revoke an old advance directive, you may destroy the old one, write “revoked” across the old one, write a new one, or tell someone that you want to revoke it. If you tell someone that you want to revoke the advance directive, you should do so in the presence of an adult witness who should then sign and date a written statement confirming that you have revoked the advance directive. If you change your advance directives, it is important to notify everyone who has a copy of your old forms.

## **SPEAKING FOR YOURSELF**

Whether or not you complete advance directives, you can always give direct instructions to your health care providers. Living Wills and Special Power of Attorney documents should come into play only if you are unable to make or communicate medical decisions. In addition, your

instructions to a health care provider should be followed, even if the provider thinks your instructions contradict your living will or the instructions of your health care agent or family.

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## PUBLIC BENEFITS

### PUBLIC BENEFIT PROGRAMS

A variety of federal and state programs have been designed to guarantee a minimum level of economic benefits for everyone. Among these programs are:

- Social Security: a system of basic income security for most retired and disabled workers and their dependents, and for survivors of deceased workers;
- Medicare: government-sponsored health insurance for the aged and disabled;
- Medicaid: health care services for low-income persons;
- SSI: supplemental security income for people sixty-five or older, blind, or disabled;
- Unemployment Compensation: temporary financial assistance for unemployed workers who meet certain requirements;
- Worker's Compensation: compensation, including medical expenses, for employees who suffer an injury or occupational disease attributable to their jobs; and
- General public assistance programs.

The eligibility requirements and amounts available under these programs may change from year to year, but you can contact one of the following offices to determine the current status of a provision: Utah Legal Services (801-328-8891), Utahns Against Hunger (801-328-2561; 1-800-453-3663; [www.uah.org](http://www.uah.org), or Utah Issues (801-521-2035; [www.altrue.net/site/poverty](http://www.altrue.net/site/poverty)).

## SOCIAL SECURITY

The program commonly known as “Social Security” is a federally funded, government-administered insurance fund that provides monthly cash payments to qualified persons who are retired or totally disabled, to their children and other dependents, and to their survivors who may be eligible for continuing benefits after the death of the qualified person. As an employee, you contribute to the Social Security fund through payroll deductions withheld by your employer from each paycheck. For each dollar deducted from your paycheck, your employer must also pay a dollar into the fund. If you are self-employed, you must pay your own Social Security taxes.

*Can I Receive Social Security Benefits?* To qualify for monthly benefits you must have worked for a certain amount of time, which is measured in three-month periods, or quarters. Generally, a worker with fewer than six quarters (that is, one and one-half years or eighteen months) of employment will not qualify for regular old-age benefits. However, no one needs more than ten years of work to be eligible for benefits. To find out more about estimating your retirement benefits you can contact the Social Security Administration at 1-800-772-1213 for a pamphlet called “How Your Retirement Benefit is Figured,” or go to [www.ssa.gov/pubs/10070-99.html](http://www.ssa.gov/pubs/10070-99.html).

*How Much Will I Receive?* The amount of monthly benefits you receive is based on your average earnings throughout your working years. Any years in which you had little or no earned income will be included in this calculation and will lower your overall average earnings. Although interrupting your career to stay home with children will not prevent you from collecting benefits, you should be aware that it will lower the amount you may collect. Because the amount of your benefits is based on your *reported* earnings, it is important to make sure that each employer accurately reports your Social Security number and the amount being withheld from each paycheck to the Social Security Administration.

## RETIREMENT BENEFITS

*When Can I Receive Retirement Benefits?* If you have worked the necessary number of quarters, you can start receiving benefits between ages 62-67. The start date depends on the year you were born. If you were born in or before 1937,

you can take “full retirement” benefits at 65. If you were born after 1937, the retirement age gradually increases in increments to 67. You can choose to receive early retirement benefits as early as age sixty-two, but you will have to accept reduced monthly benefits for the rest of your life. For example, if you retire at age 62, there will be a 21 percent reduction in benefits. On the other hand, if you delay receiving your retirement benefits, your benefits will increase every year until you take them or turn 70, whichever is earlier. The amount of increase depends on when you were born. Once you reach full retirement age, you can elect to continue to work and receive full social security benefits. However, your employment earnings will still be subject to FICA (social security) taxes. You can delay receiving your Social Security Retirement benefits while you work. Doing so may increase your benefits once you elect to receive them.

*If I Am Married, Can I Receive Retirement Benefits Based on My Spouse’s Income?* If you are married, and have not worked six quarters outside of the home, you may still be entitled to benefits based on your spouse’s work record. If your spouse is eligible for retirement benefits, you will be entitled to your own payments upon reaching the age of sixty-two. However, in order to receive *full* spouse’s benefits, you must wait until you are sixty-five to begin collecting payments. In that case, your payments will be equal to one-half of those your spouse receives. For example, if your spouse is entitled to retirement benefits of \$600 dollars per month, you are entitled to separate benefits of \$300 per month. Your benefits will be less than one-half of your spouse’s if you begin collecting them before you turn sixty-five.

In addition, if your spouse is collecting retirement benefits and you are caring for a child who is under the age of eighteen or disabled and entitled to benefits, you can collect benefits based on your spouse’s work record, regardless of your age.

If you have worked for six quarters or more, you can collect retirement payments *either* on your own record *or* on your spouse’s, whichever will pay the most. If you have worked much of your adult life, it is possible that your own benefits will be higher than those you could receive based on your spouse’s work record. If, on the other hand, you stopped working for several years, payments based on your spouse’s work record might be higher than those based on your own.



Likewise, your spouse can get retirement benefits based on your record if they will be higher than benefits based on his/her own. When you apply for retirement benefits, the Social Security office should tell you whether your own record or your spouse's will pay a higher amount.

## DISABILITY BENEFITS

*Who Can Receive Disability Benefits?* To qualify for disability benefits, you must: (1) have a disability (as shown by medical records of a doctor); (2) the disability must prevent you from engaging in substantial gainful activity; (3) the disability must have lasted for 12 months or more, be expected to last for at least 12 months, or be expected to result in death; and (4) you must have worked and paid FICA taxes for 5 years or longer before the disability occurred. Additionally, your age, education, skills, experience, and ability to adapt to new work settings will be taken into account. Whether you are disabled is a medical question that must be answered by a doctor, using appropriate objective tests. The Social Security Review Board can accept or reject a doctor's diagnosis of disability.

Disability standards are hard to meet, and the current trend is to make them even stricter. The Social Security Administration has established a set of regulations that define "disability." In determining whether you are disabled, the Review Board must ask the following questions:

1. *Are you currently working?* If you are currently employed at a job which involves normal work activity and meets certain standards concerning monthly income, you are automatically judged not to be disabled. If the answer to this question is no, the following questions will be asked.

2. *Do you suffer from a "severe" impairment?* If you do not suffer from a "severe" impairment, you are not disabled. Your impairment is severe if you can show, using medical evidence alone, that it significantly limits your physical or mental ability to do basic work activities. If this is the case, the analysis continues to the next question.

3. *Does your impairment "meet or equal a listed impairment"?* This question is answered through the use of specific medical tests. If the test results meet the standards required by the regulations, you will move on to the next question.

4. *Can you work at any job you held in the past?* If you cannot show that your impairment prevents you from performing every significant job you have held for the past fifteen years, you are not disabled. If you do show that you can no longer perform your past work, the Review Board will ask one last question.

5. *Is there a type of job existing in significant numbers in the national economy which you can perform?* If the Social Security Administration can show that there are a significant number of jobs in the national economy involving work you can perform, you will not receive disability benefits. In determining what type of work you can perform, your age, education, and job skills are taken into account. Social Security will also consider how your impairment affects your ability to do the proposed jobs. For example, a worker who is fifty-five or over is presumed "disabled" if she did not complete high school, has worked in only semi-skilled jobs, and can perform only work which can be done while sitting down. If the same worker were between eighteen and forty-four, however, she would be considered "retrainable" rather than disabled.

If the Review Board concludes that you are disabled, you will receive disability payments beginning in the sixth full month of your disability and continuing until you reach retirement age and begin receiving retirement benefits. If you remain eligible for disability payments for two consecutive years, you are then also eligible for Medicare coverage.

If you are eligible for disability benefits, your children (including your stepchildren or legally adopted children) can also receive benefits based on your disability. Your unmarried children can collect monthly benefits until they turn eighteen. In addition, your children who become disabled themselves before the age of twenty-two are eligible for benefits as long as they remain disabled.

A married woman whose husband is collecting disability benefits is entitled to collect benefits based on his work record if she is (1) caring for a child under the age of eighteen or a disabled child who is entitled to benefits; or (2) age sixty-two or older.

If the Review Board finds you are disabled, you may be referred to counselors who will evaluate your ability to work,

provide job training, and help you in job placement. Once you are able to work, you will no longer be eligible for disability benefits.

## **SURVIVORS BENEFITS**

*Who Can Receive Survivors Benefits?* Your family may be entitled to survivors benefits if you have worked one and one-half years in the three years before you die. Both your spouse and your children can get monthly survivors benefits based on your work record. A small lump-sum death payment to help pay funeral expenses is available to either (1) a surviving spouse who was living with the deceased at the time of his or her death or was separated only because of illness, or (2) a dependent child. A spouse who has not remarried and who is (1) caring for an unmarried child under the age of eighteen or a child who was disabled before the age of twenty-two and is still disabled, or (2) sixty or more years of age, or between the ages of fifty and sixty and disabled, can qualify for survivors benefits on a decedent's work record.

In the case of a child whose father has died, survivors benefits are available with no further qualifications if the child was born in wedlock. If the child is nonmarital, however, Social Security requires either proof of the child's dependency at the time of the father's death or substantial proof that the deceased is the father, which is often difficult to obtain. In spite of the potential unfairness of such regulations, the U.S. Supreme Court has held them to be constitutional.

*Am I Eligible for Benefits if I Work in My Own or Someone Else's Home?* In most jobs, Social Security contributions are deducted from your pay automatically. This may not be the case, however, if you are a household worker, such as a babysitter, maid, cook, laundry worker, butler, gardener, chauffeur, or a person who does housecleaning or home repair work.

If you are a household worker and your employer reports your earnings to Social Security, you can get one-quarter of Social Security coverage for every \$260 you earn (this amount changes from year to year). You should, therefore, show your employer your Social Security card and insist that he or she deduct Social Security contributions from your wages. If your employer does not do so, you will not get Social Security credit for your work; and if you do not have enough credits,

you and your family will not be entitled to monthly benefits based on your work record.

If you employ a household worker, it is your responsibility to see that the wages you pay are properly reported. As an employer, you must deduct Social Security contributions from the wages, pay from your own pocket an amount equal to what you have deducted, and send the money to the Internal Revenue Service with a report of total wages paid. The report form and instructions are available at any IRS office or online at [www.irs.gov](http://www.irs.gov).

*If I Change My Name, Will My Benefits Be Affected?* You should be sure that your Social Security record shows your correct name, particularly if you are employed, because your employer reports your earnings under the name you give her or him.

Whenever you change the name you use in employment, whether because of marriage, divorce, or any other reason, you should report the change to Social Security. If you choose to continue using your maiden name after marriage, you do not have to report your marriage; just be certain you use your maiden name consistently throughout your employment.

Even if you do not work, you should report any name change so that your record will show the correct name when you apply for benefits. To report a name change, simply fill out a "Request for Change in Social Security Records," a form available at any Social Security office.

*Will Divorce Affect My Benefits?* If you are divorced, you are entitled to benefits based on your ex-husband's work record when he starts collecting retirement or disability payments if you are sixty-two or older and were married to him for at least ten years.

You may also get payments if your ex-husband dies, provided you are sixty or older (fifty, if you are disabled) and you were either married for at least ten years or have young children entitled to benefits on his record.

## **SUPPLEMENTAL SECURITY INCOME (SSI)**

SSI is a federal cash benefit program that pays monthly benefits to people in financial need who are (1) sixty-five

or older, (2) blind (with vision no better than 20/200 even with glasses, or with “tunnel vision” of 20 degrees or less) or (3) disabled, regardless of age.

The program is designed to provide a basic cash income to people who have little or no income. The dollar amount of your SSI payments depends on your income and the value of your assets. Income you receive from Social Security, veterans’ compensation, pensions, and gifts generally reduces the amount of your SSI payment.

When you apply for SSI benefits, the income you receive from other sources is totaled, and, if it is less than a certain amount, you will receive an additional check each month from SSI to bring your income up to the SSI benefit level.

SSI is administered by the Social Security Administration; you should contact your local Social Security office to apply or to ask questions. The telephone number is listed under Social Security Administration in your local phone book, or call 1-800-772-1213. More information is available on the web site of the Social Security Administration at [www.ssa.gov](http://www.ssa.gov).

## YOUR SOCIAL SECURITY CHECK

Social Security benefits are paid on a monthly basis. The check you receive that month is your benefit for the month just completed. Many people choose to have their monthly checks deposited directly into their bank account. This is safe and convenient, and ensures that your money is in your account even when you are not at home to receive a check.

If you are not able to manage your benefits due to incapacity or some disability, Social Security will appoint a representative payee—a friend, relative, or a staff person or volunteer from a local agency—to receive the checks and pay your bills. Even if someone has authority to handle your finances under a power of attorney, the Social Security Administration will not allow that person to endorse your Social Security checks unless he or she has been appointed representative payee. A form to file for appointment of a representative payee is available from any Social Security office or can be found at [www.ssa.gov](http://www.ssa.gov).

## WHERE CAN I GET MORE INFORMATION ABOUT SOCIAL SECURITY?

If you would like to learn more about Social Security or to get a statement of your contributions to date, you can write to the Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. Your letter must include your Social Security number and birth date for identification. If you want to apply for benefits or need additional information, you can call your local Social Security office, which is listed under Social Security Administration in your telephone book. You can find a great deal of information and forms on the website for the Social Security Administration at [www.ssa.gov](http://www.ssa.gov), or call 1-800-772-1213.

## MEDICARE

*Who Is Covered by Medicare?* Medicare is a government administered health insurance program for which you are eligible if you are sixty-five and (1) are eligible for Social Security or Railroad Retirement benefits either as a retired worker or as the spouse or widow of a retired worker; (2) are disabled and have been receiving disability benefits for two years; or (3) you have end-stage renal disease and have required dialysis or a kidney transplant. Medicare, like Social Security, is funded through federal taxes withheld from employees’ paychecks. Eligibility is based on your Social Security coverage and work history; you do not have to be in a low-income bracket to be covered.

*When Should I Apply for Medicare?* You should apply for your Medicare insurance at least three months before the month in which you turn sixty-five, so that your application will be processed and coverage will begin the month of your birthday. Otherwise, there may be a period of time during which you are eligible but not covered. Procrastinators will be happy to know that you may also apply during the three months *after* your sixty-fifth birthday.

*What Does Medicare Do?* Traditional Medicare has two parts: Part A, or hospital insurance, covers the cost of hospitalization, “extended care” provided by a hospital when you are not hospitalized, and home health care agencies, as well as hospice. You automatically get hospital insurance if you qualify for Social Security benefits. If you don’t have

enough quarters of coverage to qualify, you can purchase the insurance for a yearly premium that changes each year.

Part B, which is optional, is medical insurance which covers medical and other health services, including a doctor's care. The price varies from year to year. You can enroll in Part B only during a "general enrollment period" each year from January 1 to March 31. If you enroll after age sixty-five, you will be charged a penalty for delayed enrollment.

When you apply for Part A, hospital insurance, you will be automatically enrolled for Part B, medical insurance, unless you tell the Social Security office you do not want it.

There have been some recent changes to Medicare. Medicare now contracts with private companies to offer Medicare-approved drug discount cards. These companies negotiate drug prices. Anyone with Medicare can get a drug discount card except those who have outpatient prescription drug coverage from Medicaid when they apply. For more information call 1-800-633-4227, or go to [www.medicare.gov](http://www.medicare.gov).

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Another new Medicare program is called Medicare Advantage. Under this program you may choose a Medicare Managed Care Plan; a Medicare Preferred Provider Organization Plan; a Medicare Private Fee-for-Service Plan; and a Medicare Specialty Plan. Medicare Advantage Plans are available in many areas of the country. They manage the Medicare coverage for their members. Medicare pays a set amount of money for your care every month to these private health plans. If Medicare Advantage Plans are available in your area, and you have Medicare Part A and Part B, you can join one and get your Medicare-covered benefits through the plan. For more information call 1-800-633-4227, or go to [www.medicare.gov](http://www.medicare.gov).

For more information on Medicare and the exact services Parts A and B cover, call or write your local Social Security office. The telephone number is listed under the Social Security Administration in your local telephone book.

## MEDICAID

Medicaid is a state-administered program that receives both state and federal funding to provide medical insurance for people with low incomes. Eligible persons receive a card that they can present to doctors, pharmacists, hospitals, and other health care providers. Bills for medical services rendered to card holders are sent to the state for payment. Medicaid programs may also pay for skilled nursing home care and in-home care for eligible persons.

*Who Is Eligible for Medicaid?* You are eligible for Medicaid if you receive SSI (see above) or meet other financial requirements established by the State of Utah, but you must apply separately. You may also qualify if you are "medically needy," a term that means your income and resources are insufficient, in comparison with a standard set by the state, to pay for your medical care. In Utah, many elderly people and low-income families qualify for Medicaid due to their medically needy status.

Medicaid now provides many services in Utah, but because each state can limit the type of service provided, there are frequent changes in Medicaid services. Currently covered services include hospital care, outpatient service like X-rays and laboratory services, doctors' fees, nursing home care, transportation for medical services, prescription drugs, some dental services, eye examinations and glasses, and sterilizations and abortions in limited circumstances.

For more information contact the Utah Medicaid Office at 1-800-662-9651, or check [www.health.utah.gov/medicaid](http://www.health.utah.gov/medicaid).

## FINANCIAL ASSISTANCE, FOOD STAMPS, CHILD CARE AND OTHER BENEFITS

Financial assistance programs have changed a great deal in the last few years. Anyone in need of financial assistance, food stamps, child care help, and other services should apply for benefits through the Utah Department of Workforce Services. The main telephone number is 1-888-920-WORK. However, the most useful source of information is the Department's web site at [jobs.utah.gov](http://jobs.utah.gov).

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Assistance programs include the Family Employment Program, General Assistance Program, Food Stamps, Refugee Services, Medicaid, Adoption Assistance, Diversion, and Unemployment Compensation. Eligibility requirements are different for each program and change from time to time.

Applications for food stamps and other financial assistance programs are available through the Department of Workforce Services. For more information see [jobs.utah.gov/services](http://jobs.utah.gov/services). To check for Food Stamp eligibility, see [www.govbenefits.gov](http://www.govbenefits.gov).

## UNEMPLOYMENT COMPENSATION

Funded by mandatory employer and employee contributions, the unemployment insurance program provides temporary financial help to unemployed workers who meet certain requirements.

*Who Is Eligible for Unemployment Compensation?* You are eligible for unemployment benefits if you:

- Earned a minimum amount of covered wages in a specified period of time;
- Are both able and available to work;
- Are unemployed through no fault of your own.

If you are eligible, the size of your payments and the number of weeks for which you can receive them depends on how long you worked and how much you earned.

The Utah Department of Workforce Services (DWS) administers the unemployment compensation program. Unemployment insurance claims can be filed on DWS' website at [jobs.utah.gov](http://jobs.utah.gov) or by calling the Unemployment Insurance Claims Center.

To collect unemployment insurance compensation you must meet continuing eligibility requirements, including registering for work. You can register for work at [jobs.utah.gov](http://jobs.utah.gov), or you can go to a DWS Employment Center. (DWS Employment Centers are located in almost county in the state.) You must also diligently seek work and file weekly reports with DWS on [jobs.utah.gov](http://jobs.utah.gov) or by telephone, regarding your work search efforts.

*How Does Pregnancy Affect Eligibility for Unemployment Compensation?* Although pregnancy is not specifically addressed in the Utah unemployment compensation law, pregnant women face additional problems in meeting eligibility requirements.

The law requires that a person asking for unemployment benefits be "able" to work. A pregnancy will eventually interfere with your ability to work, at least for some period of time. Recently the United States Supreme Court ruled that an individual's ability to work had to be determined on a case-by-case basis, and that the state could not treat a woman as unable to work simply because she is pregnant.

If you are unemployed and pregnant, you may be entitled to unemployment compensation if you are otherwise qualified and can prove that you are able to work. If you believe that you were improperly denied unemployment benefits on the basis of pregnancy, you should contact an attorney, either at a private law firm or at Utah Legal Services at 1-800-662-4245.

For more information about Unemployment Compensation and other financial assistance programs see [jobs.utah.gov/services](http://jobs.utah.gov/services) or [www.govbenefits.gov](http://www.govbenefits.gov).

## WORKERS' COMPENSATION

Workers' Compensation is a state program intended to provide financial assistance to workers who are hurt on the job or harmed by the work they do. If you are injured in an accident that occurred while you were working at your job, or if you are suffering from an "occupational disease" caused by the type of work you perform, Workers' Compensation is available to pay your medical expenses and to replace at least a portion of your salary or wages for any period of time in which you are temporarily unable to work because of the injury or illness. The Workers' Compensation program replaces rights you might otherwise have to sue your employer for your injuries. Consequently, unless your injury was caused by an intentional or extremely reckless act, Workers' Compensation is usually your only option for reimbursement of your financial damages.



If you are injured on the job, or diagnosed with an “occupational disease” you believe was caused by the work you do, it is very important that you inform your employer in writing as soon as possible, preferably within forty-eight hours of the injury. You should then contact the state Industrial Commission at 801-530-6800 as soon as possible for information on how to file a claim for workers’ compensation benefits. If you do not file a claim within three years of the accident, you will not be eligible for compensation.

### **WHAT SHOULD I DO IF I AM BEING DENIED BENEFITS TO WHICH I BELIEVE I AM ENTITLED?**

Government agencies, being staffed by people, sometimes make mistakes. Their decisions are subject to review by the agency itself, by an administrative law judge, and finally, in the court system. Individuals making decisions for agencies are required by state and federal law to follow certain procedures. Failure to follow those procedures can invalidate the decision.

If you are denied benefits to which you believe you are entitled, you can insist that the reasons for the denial be explained to you. If you still do not agree with the decision of the agency and you believe that your claim was improperly or illegally denied, you should immediately contact an attorney with a private firm or with Utah Legal Services. Your attorney will help you file a written complaint with the appropriate office and request a fair hearing.

You have the right to appeal any denial of benefits. Make sure you receive a written notice of a denial. In most cases, it is not possible to appeal an oral denial. Once you receive a written notice of denial, check carefully the time frame within which you must file your written appeal as the time frames are often short—within a few weeks or a month. If you have any questions about your appeal rights, contact Utah Legal Services at 801-328-8891 or 1-800-662-4245.

### **PUBLIC PROGRAMS FOR OLDER PERSONS**

The Older Americans Act, a federal law, requires each state to provide a variety of services to persons 60 years of age or older. The programs include in-home services, Meals on Wheels, congregate meals and other community-based programs offered at senior citizen centers, transportation, care management, and caregiver support services. In addition, older persons and the people who care for them can receive information and referrals on a wide range of topics from senior subsidized housing units to health insurance information. All programs are run by local Area Agencies on Aging. Not all programs are available in every locality and some programs have limited resources. To check your eligibility and to find your local area agency, contact the Utah Division of Aging and Adult Services at 801-538-3910 or [www.hsdaas.utah.gov](http://www.hsdaas.utah.gov).

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## INCOME TAXES

NOTE: This chapter primarily describes certain provisions of federal income tax laws in effect on April 1, 2005. Because of the complexity of the federal tax laws and the fact that such laws frequently change, you should not rely on this article in computing your federal tax liability or engaging in tax planning. In 2001, 2002, 2003 and again in 2004, Congress made significant changes to the tax laws. Consequently, this chapter is intended to provide very general information only. You should consult with your own tax advisor about federal and state income tax issues and any questions you may have concerning the information contained in this chapter. For assistance in filing your taxes, please see the list of free tax services in the resource section at the back of this book.

### WHAT FACTORS PLAY A SIGNIFICANT ROLE IN DETERMINING MY INCOME TAX LIABILITY?

Your taxable income and marital status play a significant role in determining your income tax liability. In addition, whether you have dependents for which you can claim a personal exemption may also impact your tax liability. You also have the choice to use a standard deduction or itemize your deductions on your tax return. Additionally, you may be eligible for certain tax credits. Everyone's tax situation will be different. You need to look at each of these factors and decide on the best way for you to file your income taxes. This chapter discusses some very basic provisions of federal and state income tax law that may affect you.

### WHAT INFORMATION WILL I NEED TO GATHER TO FILE MY TAXES?

Your employers for all wages earned in the prior calendar year will give you a W2 form by the end of January. If you were employed as an independent consultant, you should receive a 1099 form for wages earned. If you do not receive

a W2 or a 1099 for every job you had in the previous year, you will need to contact your employer and past employers. You will need to keep documentation for all other types of income you received during the year. You will need your social security number and the social security number for all of your dependents. Receipts and documentation for any deductions that you will take should be saved as well. Finally, you will need the appropriate tax forms. Tax forms are available at [www.irs.gov](http://www.irs.gov). If you use a free filing service, they will most likely have forms for you.

## **DO I HAVE TO FILE A TAX RETURN? WHAT KINDS OF INCOME MIGHT BE SIGNIFICANT TO ME AS A FEMALE TAXPAYER?**

### **LIABILITY TO FILE A RETURN**

If you make under a certain income, you are not required to file a tax return. However, you may be eligible for certain credits and must file a tax return to receive those tax credits.

In 2005, if you made more than the gross income listed below, then you must file a tax return. Filing status will be discussed in the next section.

<b>Filing Status</b>	<b>2005</b>
Single persons (including divorced)	\$ 7,300
Married persons filing jointly	14,600
Married persons filing separately	7,300
Qualifying widow	14,600
Heads of households	10,450

### **TYPES OF INCOME REPORTED ON YOUR TAXES**

If you are receiving alimony or separate maintenance payments, you must pay tax on the payments. Generally, there is no taxable gain or loss on the transfer of property as part of a divorce or settlement. The transfer is treated as a tax-free gift. See IRS Publication 504, "Divorced or Separated Individuals," for additional information.

Support for a minor child is not taxed as income to you; however, unless the divorce decree or separation agreement specifies an amount of child support, the entire payment you receive will be considered alimony and therefore taxable.

If you have an adopted child, payments you receive from a state agency to help you care for the child are not subjected to income tax, but you cannot count that money as child support you furnished in claiming a dependency exemption for that child.

Unemployment benefits from a private program are taxable to the extent the amounts you receive exceed the amounts you contributed to the program. Amounts received as unemployment compensation under either a federal or state law are included in your taxable income.

Depending on the amount of an individual's adjusted gross income, up to 85 percent of Social Security benefits may be considered taxable income to the recipient. For more information on the tax on Social Security benefits and on estimated taxes, see IRS Publication 915, "Social Security and Equivalent Railroad Retirement Benefits."

Babysitting income, tips, and gratuities are also taxable income. If you are a widow, proceeds of a life insurance policy on your husband's life are not taxable income. If you are the executor of your husband's estate, your fees, if any, are taxable income. Distributions from IRAs and qualified retirement accounts are subject to income tax in the year they are received. Remember, just because you did not receive your money from a traditional job does not mean it is not taxable.

If you or your husband serve in the military, Family Separation Allowances received because of overseas assignments are excluded from your taxable income. In some situations, combat zone pay can also be excluded from your income. If you are the widow of a serviceman who died in active service, death gratuity benefits you receive from the government are not taxable, nor are benefits you receive under any law administered by the Veterans' Administration. Reservists may be eligible to deduct travel expenses to and from duty assignments. See IRS Publication 3 for more information.

## HOW DO I DETERMINE MY FILING STATUS?

Your filing status is determined by your marital status. Your filing status is important because it controls the tax rates that are applied to your taxable income and affects your eligibility for certain exemptions, deductions, and credits. You should determine which of the following filing classifications best describes your status on the last day of the tax year.

**Married Filing Joint Return:** You may file under this classification if, on the last day of the tax year, any one of the following applies:

1. You are married and living as husband and wife;
2. You are living with a man in a common-law marriage recognized in the state where the marriage began,
3. You are married and living apart, but you are not legally separated under a decree of divorce or separate maintenance; or
4. You are separated under an interlocutory decree of divorce.

You may file jointly whether or not both you and your husband had income and irrespective of the amount of such income.

**Married Filing Separate Returns:** If you and your husband are eligible to file joint returns, you may each file as a married person filing separate returns, whether or not both you and your husband had income. If you file separately, you should each report only your own income and claim only your own exemptions and deductions.

**Qualifying Widow:** If your husband dies, you may file a joint return for the year of his death, thus permitting you to use lower tax rates than if filing as a single person. For two years thereafter, and assuming you do not remarry, you may file your return as a qualifying widow and use joint tax rates if you paid over half the cost of maintaining your home and if you have a child you can claim as a dependent that lived in your home for the entire tax year.

**Head of Household:** You may file as a head of household, and get the advantage of special rates, if you meet all of the following criteria:

1. You are unmarried;
2. You pay over half the cost of maintaining your home; and
3. Your home was, for more than half the tax year, the main home of your child, stepchild, adopted child, or foster child for whom you can claim an exemption.

**Single:** If you are unmarried and do not qualify to file as a qualifying widow or head of household, you must file as a single taxpayer.

## WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF FILING A JOINT RETURN?

There are many factors that will affect your decision to file jointly or separately. Your unique situation will determine which filing status is best for you. You may want to figure your taxes both jointly and separately to determine which saves you more money.

If you file a joint return, you can claim the child and dependent care credit, the earned income credit, and the tax credit for the elderly. These credits are not available for married persons filing separately.

Filing a separate return is sometimes advantageous. If either you or your husband have substantial deductions that can only be claimed to the extent they exceed a certain percentage of adjusted gross income, filing separately may be advisable. Medical expenses are deductible only to the extent they exceed 7.5 percent of adjusted gross income. Net casualty and theft loss deductions relating to nonbusiness property are deductible only to the extent they exceed 10 percent of adjusted gross income. Moreover, numerous other miscellaneous itemized deductions, such as unreimbursed employee business expenses, expenses related to investment income and property, and tax return preparation costs are deductible only to the extent they exceed 2 percent of

adjusted gross income. If the spouse with those expenses has a low adjusted gross income and the other spouse has a high adjusted gross income, filing separate returns may produce certain tax benefits.

A disadvantage of filing a joint return is that you and your husband are not only jointly liable for the tax, but if your husband dies, disappears, or is incarcerated, each of you is separately liable for the entire tax. The so-called “Innocent Spouse Provision” in the Internal Revenue Code may provide relief from liability on a joint return in limited circumstances including:

1. There is a substantial understatement of tax which is attributable to “grossly erroneous items” (such as claims for deductions or credits made by your husband and for which there is no basis in fact or law); and
2. You can prove that you not only did not know about the under-statement but had no reason to know of it; and
3. It would be inequitable to hold you liable for the tax deficiency in light of the circumstances.

Additionally, if you receive a tax deficiency notice with respect to a joint return filed with your husband to whom you no longer are married or sharing the same household, the IRS must disclose its collection activities upon your written request. The IRS will then inform you whether it has attempted to collect the deficiency from your spouse, the general nature of the collection activities, and the amount collected (if any). See IRS Publication 971 for more information.

### **WHAT IS THE MARRIAGE PENALTY AND HOW DOES IT AFFECT ME?**

Marriage penalty is the term used to describe the tax disadvantage that two-wage earner married couples have compared to single taxpayers. Recent tax legislation has eliminated the “marriage penalty” through 2010.

### **EXEMPTIONS, STANDARD DEDUCTIONS, ITEMIZED DEDUCTIONS AND TAX CREDITS: WHAT ARE THEY AND HOW DO THEY AFFECT MY INCOME TAX LIABILITY?**

#### **HOW DO I DETERMINE THE NUMBER OF EXEMPTIONS I AM ALLOWED?**

Exemptions reduce your taxable income. You may be entitled to one or more exemptions. The personal exemption amount for each individual is adjusted each year for inflation. For 2005, each individual who is not a dependent of another receives a personal exemption of \$3,200. The benefit of the personal exemption is phased out for taxpayers whose taxable income exceeded specific levels. There are personal exemptions for yourself, your spouse, and for dependents. These are discussed below. See IRS Publication 501 for more information.

**Exemptions for Married Persons:** If you are married, or separated but not under a final divorce decree or were widowed during the tax year and are not remarried, and you file a joint return, you and your husband may each claim an exemption of \$3,200 (2005), or a total of \$6,400. If you and your husband file separate returns, then you may take only your exemption deduction on your return and he may take his exemption deduction on his return.

If your husband dies during the tax year and you had no gross income, but were not the dependent of another, you may claim a \$3,200 exemption (2005) for both you and your husband on the final return for your deceased spouse.

**Exemptions for Dependents:** Five criteria must be met to claim the personal exemption for a dependent.

1. *Support.* Generally, you must furnish over 50 percent of a person’s support to be entitled to a personal exemption for him or her.

Special rules for determining support apply if you are legally divorced or are separated under a written maintenance agreement. Generally, the parent who has custody for the greater period during the year is considered to have provided more than half of the child’s support. However, the



noncustodial parent can claim the personal exemption if the custodial parent signs a written declaration that he or she will not claim the dependency exemption. A copy of the written agreement allocating the dependency exemption to the noncustodial parent must be attached to that parent's return. Each dependant can only be claimed once per tax year. Therefore, you and your ex-husband cannot both claim your child in the same tax year.

2. *Relationship.* The dependency exemption can be claimed for most blood relatives, relatives by marriage, and legally adopted children. In addition, a person who used your household as a principal residence for the entire year may qualify as your dependent.

3. *Gross Income Limit.* The dependent's gross income for the year must be less than the exemption amount, unless the dependent is your child and is either under the age of nineteen by the end of the year or is a student under the age of twenty-four.

4. *Joint Return.* You may not claim a dependency exemption for any taxpayer who files a joint return.

5. *Citizenship or Residence.* The dependent must be a U.S. citizen or a resident of the U.S., Canada or Mexico.

**Deductions.** Should I take the standard deduction or should I itemize?

Generally, you will have the choice between taking a standard deduction or itemizing your deductions. You should evaluate your personal situation to determine which method will save you the most money.

**Standard Deduction:** Your filing status will also determine the standard deduction for which you are eligible. The standard deduction is a fixed allowance taken in lieu of itemized deductions and is adjusted each year for inflation.

The basic standard deduction is projected to be as follows:

<b>Filing Status</b>	2005
Single persons (including divorced)	\$ 5,000
Married persons filing jointly	10,000
Married persons filing separately	5,000

Qualifying widow	10,000
Heads of households	7,300

You may also be eligible to deduct student loan interest, some tuition and fees, health savings accounts, and moving expenses. If you have had any of these life events, you should discuss these possible deduction with a tax preparer. These items are deductible whether you take the standard deduction, or itemize.

## SHOULD YOU ITEMIZE AND WHAT DEDUCTIONS CAN BE ITEMIZED?

If your total itemized deductions exceed the standard deduction, then you should itemize. Consider the following possible deductions to see if you should itemize.

You may deduct fees paid to either a lawyer or an accountant for tax advice during the course of a divorce. However, you may not deduct legal fees for representation in the divorce because these fees are considered to be personal expenses and most personal expenses are nondeductible. If you have to sue to get or collect alimony, you may be able to deduct the legal fees incurred in the suit as income-producing expenses. The deduction for tax advice and for costs of collecting alimony can be deducted only to the extent they exceed 2 percent of adjusted gross income. You can deduct alimony or separate maintenance payments that you pay, but no deductions are allowed for any property transferred as a result of the divorce. Moreover, no deduction is allowed for child support payments.

Deductions are allowed for such medical expenses as contraceptives prescribed by your doctor, legal abortions, and voluntary sterilizations. Care of a normal and healthy baby by a nurse, diaper services, etc., do not qualify as deductible medical expenses. You may take this deduction for medical expenses paid this year, regardless of when the services were performed. Additionally, you may include payments for medical expenses for yourself, your spouse, or dependent. If your insurance paid for the medical service or you were otherwise reimbursed, you cannot take the deduction. As discussed above, medical expenses are deductible only to the extent they exceed 7.5 percent of your adjusted gross income. For further information, see "Medical and Dental Expenses," IRS Publication 502.

If you own your own home and paid interest on your mortgage, you may be able to deduct that interest. Additionally, if you sold, bought or refinanced a house in this tax year and paid points, you may be able to deduct that amount.

Charitable contributions may be tax deductible. This includes cash donations as well as property. If you donate clothing and household items to charities such as the Salvation Army, the value of those items may be deductible. You should keep records of all such contributions.

Taxes previously paid may also be deductible. State income tax, vehicle or boat taxes can be considered in this deduction.

Tax credits that may be particularly important to me.

Tax credits are available whether you itemize or use a standard deductions. These credits lower your tax responsibility dollar for dollar.

An important break for many working women is the dependent care credit. If you are responsible for dependent care expenses, you may qualify for this credit. The expenses you incur must be paid for the care of a spouse or dependent who is incapable of self-care, or any person under the age thirteen for whom you claim a dependency exemption. (However, in the case of divorced parents, the custodial parent can claim the credit even if the noncustodial parent claims the child's dependency exemption.)

You can claim the credit only if you meet all of the following requirements.

1. You paid for the care so that you (and your husband if you were married) could work or look for work.
2. You and the qualifying person(s) lived in the same house.
3. You (and your husband if you were married) paid over half the cost of keeping up your home. The cost includes rent, mortgage interest, property taxes, utilities, home repairs and food eaten at home.

4. The person you paid to provide the care was not your husband or a person you could claim as a dependent. If the person you paid to provide the care was your child, he or she must be at least nineteen years of age by the end of the tax year for which you are claiming the expense.

5. If you are considered "married" for federal income tax purposes, you must file a joint return with your husband to qualify for this credit. However, you can take the credit even if you do not file a joint return if

- a. you were living apart from your husband during the last six months of the year, and
- b. you provided over half the cost of maintaining a household that was the principal residence of the qualifying individual for over half of the year.

The maximum amount of qualified child care expenses you can take to reduce your tax in any year is \$2,400 if your expenses are for one qualifying individual or \$4,800 if expenses are for two or more. The amount of the child care credit is 30 percent of qualified child care expenses if your adjusted gross income is \$10,000 or less. The 30 percent is reduced by 1 percent for each \$2,000 of your adjusted gross income, or part of \$2,000, above \$10,000 until the percentage is reduced to 20 percent for adjusted gross income of \$28,000. A chart for the applicable percentage is provided on Form 2441, "Child and Dependent Care Expenses."

The credit is available to married couples if one works full-time and the other part-time or is a full-time student. The amount is limited to the earnings of the spouse with the lower income. If one spouse is a student or is incapable of self-care and so has no earned income, the law presumes an income of \$250 per month if there is one dependent and \$500 per month for two or more whether there is, in fact, any income at all. If, in the same month, both you and your husband were full-time students and did not work, you may not claim any income for that month on which to figure the credit. The same rule applies to a couple who did not work because neither was capable of self-care. See IRS Publication number 503 for more information.

After a number of years of not allowing a deduction for adoption expenses, Congress has once again made these

expenses deductible starting in 1997. In 2004, individuals will be entitled to a \$10,390-per-child credit for qualifying adoption expenses and an exclusion of up to \$10,390 per child for employer-provided adoption assistance. Both the credit and the exclusion phase out ratably between \$155,860 and \$195,860 of adjusted gross income. See IRS Publication 968 for more information.

Another important tax break is the earned income credit (EIC). The EIC is available for certain low-income taxpayers (if married, a joint return must be filed in order to claim the EIC). The amount of the credit is dependant on (i) how many qualifying children the taxpayer has, if any, and (ii) the taxpayer's amount of earned income. You can use the worksheet provided by the IRS in your tax booklet to figure your EIC. The EIC is completely phased out at \$34,458 for married taxpayers filing jointly with more than one qualifying children, \$30,338 for married taxpayers filing jointly with one qualifying child, and \$12,490 for married taxpayers filing jointly with no children. For single taxpayers the limits are: \$34,458 for more than one child; \$30,338 for one child; and \$11,490 for no children. It is possible to get advanced payment of the EIC through your paycheck. For further information on how to compute the EIC, see "Earned Income Credit," IRS Publication 596.

The child tax credit is an important tax credit for women. This credit is in addition to child care expenses and the earned income credit. In 2004 you can claim up to \$1,000 for each qualifying child. To be a qualifying child for the child tax credit, all of the following must be met.

1. The child must be claimed as a dependant on the 1040 form or 1040a tax form.
2. The child must be under age 17 at the end of the tax year.
3. The child must be your:
  - a. Son, daughter, adopted child, stepchild, or a descendant of any of them (for example, your grandchild);
  - b. Brother, sister, stepbrother, stepsister, or a descendant of any of them (for example

your niece or nephew) who you cared for as you would your own child;

- c. Foster child (any child placed with you by an authorized placement agency whom you cared for as you would your own child);
- d. A US citizen or resident alien.

This tax credit is phased out if your adjusted gross income is more than \$110,000 if filing married jointly, \$75,000 if filing single, head of household or qualifying widow, and \$55,000 if filing married separately. If you do not owe any tax, you may still be eligible to receive the additional child tax credit. See IRS Publication 972 for more information.

## WHAT IF I CAN'T PAY MY TAXES?

If you cannot pay the full amount due on your federal income taxes, you may be eligible for a payment plan. You must apply for an installment agreement. Contact the IRS for more information.

## WHAT ABOUT UTAH INCOME TAX LAWS?

Utah income tax liability is computed in substantially the same manner as federal income tax liability. The Utah state income tax return takes most figures for computing Utah income tax directly off your federal income tax return, but some adjustments are required to certain figures taken off the federal return. The number of personal exemptions allowable is the same as those permitted under federal tax law. The amount excluded from income per exemption is 75 percent of the federal personal exemption. For 2004, the Utah personal exemption is \$2,325 per person.

In Utah, married taxpayers may file jointly or separately; however, if you filed separate federal income tax returns, you must file separate returns in Utah. If you filed a joint federal return, you can choose to file separate Utah returns, dividing up non-business deductions as you like. This includes a division of personal exemptions for a dependent child or relative.

## WHERE CAN I GET MORE INFORMATION ON INCOME TAXES?

Federal income tax forms contain detailed instructions. The IRS also publishes a series of free pamphlets, the Taxpayer Information Series, available at your local IRS office. For IRS forms and IRS Publications, call your local IRS office or 1-800-829-1040. The IRS can also be reached over the internet at [www.irs.gov](http://www.irs.gov). Additional information may be available at your local public library or university. See the resource section at the end of this book for more information.

# 11

## MONEY PROBLEMS AND BANKRUPTCY

### WHAT IS BANKRUPTCY?

In common speech, we say someone is bankrupt when she is over-burdened by her financial obligations and cannot pay all of her bills. Bankruptcy as a legal state is a process of restructuring (reconfiguring payments on already-existing debts) or discharging (erasing) financial obligations through a court. Congress enacted the federal law known as the “Bankruptcy Code” to help those with serious debt problems to seek relief from those debts and to allow a fresh financial start.

### HOW DOES BANKRUPTCY AFFECT ME?

Bankruptcy laws can affect you in various ways. You might find yourself in a position where you cannot pay your bills or make loan or mortgage payments, or you might receive notice from the court that an individual, partnership, or corporation who owes *you* money, products or services is in bankruptcy.

Before taking any action on the information contained in this chapter, you should timely consult an attorney who is experienced in bankruptcy law. A lawyer can give you specific and individualized assistance about your alternatives in the event you owe money to some-one or someone owes you money. Even if you feel you cannot afford an attorney’s services, you should at least seek a consultation with one to explain the law to you.

The Utah State Bar’s Lawyer Referral Office (801-531-9075) will refer you to a lawyer who will meet with you for \$30 for the first thirty-minute visit. If you have limited income and feel that you cannot afford a private attorney, you should contact the Utah Legal Services office at 801-328-8891 to inquire whether you qualify for assistance.

## WHAT SHOULD I KNOW BEFORE I BECOME A DEBTOR?

A person, corporation or entity who files for bankruptcy relief is referred to as a “debtor.” A “creditor” of a debtor, on the other hand, is a person, corporation or entity who has a “claim” against a debtor, meaning that the debtor owes the creditor money, products, or services.

You should know that there are some alternatives to filing bankruptcy. You can sometimes work out an arrangement with individual creditors to pay off your debt in a certain number of installments. However, take caution in making these arrangements because the alternative arrangement will not be legally binding on you or the creditor unless you also put it into writing and the writing is signed by both you and the creditor. It is unwise to try to work out this kind of arrangement without an attorney because the law is very complex.

You can be subjected to a great deal of pressure, however, when you owe someone money. For instance, if someone has loaned you money to purchase a car, and that person has used the car as collateral on the loan, that person can take the car away from you if you fail to make payments on the loan. The creditor could take you to court directly or refer the case to a collection agency (which can sue you in a state court). If the sum is small enough, the creditor could take you to a small claims court. If you ran up the debt on a credit card, your bank or the store can cancel your credit with them.

There are, however, some restrictions on what a creditor or collection agency can do. A creditor (or a collection agency) is not allowed to call you at work if you ask the creditor not to do so. A creditor should not call you during normal sleeping hours and should not exaggerate the legal consequences of what will happen to you if you do not pay. If a creditor does call you at work or harass you, you can call the Federal Trade Commission at (877) FTC-HELP or you can file a complaint online at [www.ftc.gov](http://www.ftc.gov).

If a creditor refuses to negotiate with you or to make some arrangement for payment, you can consult a credit counseling service. These services, which are listed in the yellow pages, are sometimes helpful in explaining different

options to you and in helping you to work out arrangements with creditors. Under state law, you and your creditors can voluntarily agree to a repayment plan. However, if even one of your creditors refuses to go along with this arrangement, the agreement is not binding on any of them. It is best to consult a lawyer before entering into any agreements with your creditors.

## WHAT HAPPENS WHEN I FILE FOR BANKRUPTCY?

If you find that you cannot pay your bills and your creditors are pressuring you, you may wish to consider one of the kinds of debt relief provided by the Bankruptcy Code to give yourself a chance for a fresh start. Upon filing your bankruptcy petition, the court issues an “Order for Relief.” Additionally, an “automatic stay” goes into effect as soon as you file for bankruptcy. The automatic stay means that all collection efforts, harassment, and lawsuits against you cease immediately, giving you a breathing spell from your creditors’ attempts to collect from you. In a chapter 13 proceeding (explained below), the “automatic stay” provision also protects your co-debtors on consumer debts who have not filed petitions in bankruptcy. For example, for non-business debts like personal items, family expenses, or household expenses where someone co-signs with you, until the creditor files a request with the court for permission to collect from the co-signer, your chapter 13 petition also protects the co-signer. Co-signing on a business loan is not protected.

Even though the great advantage of bankruptcy is that it lets you start over again with a clean slate with your creditors, a “fresh start,” there are some disadvantages that make other repayment arrangements worth considering. Your reputation may suffer and the declaration of bankruptcy will be reported on your credit history. It is not a cheap or easy way to get yourself out of a minor financial hole.

## WHAT TYPES OF PROCEDURES DOES THE BANKRUPTCY CODE PROVIDE?

Bankruptcy proceedings may be either voluntary or involuntary. “Voluntary” means that you have taken the initiative yourself to seek relief under the Bankruptcy Code. In contrast, your creditors may begin an “involuntary”



proceeding against you. This usually happens only when debts are connected to a business. Few creditors initiate bankruptcy proceedings to collect personal accounts.

The Bankruptcy Code offers various types of proceedings under different chapters of the Bankruptcy Code. They include the following:

## Chapter 7

A chapter 7 liquidation proceeding may be either voluntary or involuntary. In a chapter 7 liquidation proceeding, a “trustee” is appointed by the court and is authorized to gather together all of your nonexempt assets and sell them, or “liquidate” them, for cash. “Exempt” assets are those which cannot be reached by your creditors. In Utah, the exemptions you may claim in bankruptcy are provided for by state law, and your attorney will tell you what items are exempt. Assets that are exempt include basic household appliances, such as a refrigerator, washer and dryer, certain items of furniture, clothing, and certain heirlooms. The law also specifies the dollar amounts of some of the exemptions. If you use a car in your business or profession, it is exempt up to \$2,500. (Driving back and forth to work is considered personal use, not professional use; a plumber’s truck would be considered a professional-use vehicle.) The tools of your trade are exempt up to \$3,500. You can keep \$1,000 worth of furniture, \$500 worth of animals, books, musical instruments, and \$500 worth of heirlooms or sentimental items.

The law also specifies a homestead exemption. This exemption applies to real property (e.g., a house) or a mobile home located in Utah which is your personal residence. An owner or co-owner can exempt a value of \$10,000 in a house, and a co-owner (spouse) can have \$10,000. If you have a mortgage on the house, the homestead right does not apply except on the equity you have in the house. If your house is worth \$120,000 and you have a first mortgage of \$90,000, you deduct the homestead allowance from the \$30,000 difference or equity. Alimony, child support, and maintenance that you receive are also exempt from claims of creditors.

If the trustee decides to liquidate (sell) your nonexempt assets, the cash that is raised will be distributed among your unsecured creditors (those who do not have a lien or security [collateral]) on a pro-rata basis. That is, each creditor will

receive an amount of cash proportionate to the size of that creditor’s claim against you. If your only assets are exempt or of nominal value, the trustee may close your case as a “no-asset” case, and your creditors will receive nothing on their claims.

At the end of the liquidation proceedings, you will receive a “discharge” from all debts included in the plan. This gives you a clean slate except for obligations for taxes, alimony, child support, student loans, and mortgage or other long-term secured obligations.

Based on a bankruptcy law passed in 2005, debtors are no longer free to choose chapter 7 over chapter 13 (explained below) if they have an income above the median state income. For example, in Utah the median family income in 2003 was \$49,275. The median family income is adjusted upwards each year. If a debtor’s income is above the median state income, either the trustee or a creditor can force a debtor into a chapter 13 reorganization plan instead of a chapter 7 liquidation.

## Chapter 13

Chapter 13 is known as a proceeding for the “Adjustment of Debts of an Individual with Regular Income.” This chapter allows someone with regular income (such as wages or any form of regular government payments or assistance) to work out a plan to pay off her outstanding debts, in full or in part, over a specified period of time (but not longer than 60 months). Mortgages and secured debts provide for foreclosure and repossession if you fall behind on your monthly payments. Chapter 13 allows you to make the current payments and cure the default over the time of the plan without risking foreclosure or repossession to help those who are unable to meet their financial obligations. A bankruptcy judge must “confirm” the plan before it goes into effect.

As the debtor, you will propose a plan on which creditors may vote as part of the confirmation process. If you fail to pay the plan on schedule, the trustee will file a motion asking the court to convert the matter to a chapter 7 case or to dismiss it. If it is dismissed, then it is a race to the courthouse for the creditors because the first creditor to sue you and secure a judgment against you will get your nonexempt property.

Note that you are the only one who can file a chapter 13 case; your creditors cannot force you into a chapter 13. You also have a right to “convert” your chapter 13 into a chapter 7 liquidation bankruptcy at any point as long as your income is below the state median income. Your creditors can only convert your chapter 13 to a chapter 7 if you are in default.

After all payments provided by your chapter 13 plan have been made (over a period of time no longer than 60 months) and after you have completed a mandatory education course in personal financial management, you will receive a discharge from all debts included in the plan. This gives you a clean slate except for obligations for taxes, alimony, child support, student loans, and mortgage or other long-term secured obligations that you owe.

## Chapter 11

Chapter 11 is known as a “Reorganization of Debt” proceeding. Chapter 11 is most commonly used by businesses (corporations or partnerships) because it allows the business to remain in operation. The debtor proposes a payment plan for her creditors, which must be confirmed by the bankruptcy judge after creditors vote for or against it.

### WHAT IS THE PROCEDURE AND COST FOR FILING A VOLUNTARY BANKRUPTCY?

In order to file for bankruptcy, you must file a petition with the Bankruptcy Court and pay a \$209 fee for a chapter 7 petition, a \$194 fee for a chapter 13 petition, or a \$839 fee for a chapter 11 petition. Payment of this fee is mandatory, but it may be paid in installments under some circumstances.

Legal fees are in addition to the court filing fees. Attorneys generally charge for services based upon hourly rates, and the total fee will depend on the complexity of the case. In chapter 7 cases, you usually have to pay the fees immediately. If you file a chapter 13 bankruptcy, you may be able to arrange to pay part of the fee initially and negotiate an arrangement to pay the balance in installments out of your monthly payments (along with your payments to the other creditors). In most cases, the fees have to be approved by the court.

You and your husband may decide to file a joint case if you are both responsible for your debts and own most of your property together. This procedure is designed to reduce legal and court costs and allow a speedier decision. Under this procedure you are required to pay only one filing fee.

### WHAT HAPPENS TO ME, MY ASSETS, AND MY DEBTS IF I CHOOSE A CHAPTER 7?

If you choose a chapter 7 liquidation bankruptcy, a trustee is appointed by the court to “collect” your assets under the supervision of a bankruptcy judge. The trustee has the right to inventory and evaluate all of your property to see if it may be used to pay your debts. As discussed above, you are permitted to claim certain property as “exempt,” or beyond the reach of your creditors. Once your nonexempt assets (if any) have been collected and sold, or “liquidated,” and the cash from the sale distributed among your creditors, or if the trustee decides your case is a “no-asset” case, your case will be closed.

To encourage the fresh start, the law provides that no government office can discriminate against you just because you have gone through a bankruptcy proceeding. This means you cannot lose your job, whether with the government or private industry, or be denied a driver’s license or other license solely because of your bankruptcy.

Although you receive a discharge of debts, there are a few important exceptions. A person who declares bankruptcy must still pay alimony or child support if he or she had that obligation prior to declaring bankruptcy. You must still pay some other types of obligations, like student loans, certain taxes, or debts you acquire through false pretenses or the use of a false written statement.

### WHAT’S A REAFFIRMATION?

Even though you have an opportunity for a new beginning by obtaining a discharge of your debts, you may decide to “reaffirm” your legal obligation to pay a particular debt. If the “reaffirmation” involves a consumer debt, like the purchase of a TV from a department store, the reaffirmation agreement must be in writing, signed by the creditor, you, and your attorney, and it must be filed with the court before

your discharge is granted. Only after you take all these steps will you be legally required to pay that particular debt as though the discharge had never occurred. Of course, you may decide voluntarily to pay some or all of the debts from which you are discharged, but you are not legally obligated to do so, nor can your creditors require you to do so.

Reaffirming is completely voluntary on the debtor's part. If you are a creditor and there is a possibility of reaffirmation, it is important that you get legal advice immediately.

### **WHAT EFFECT WILL BANKRUPTCY HAVE ON MY ABILITY TO OBTAIN CREDIT?**

Ironically, you may be viewed by some creditors as a better credit risk once you have gone through a bankruptcy proceeding. This is because the law says that a chapter 7 debtor cannot receive a discharge if he receives a prior discharge within eight years of a new filing. Additionally, a discharge will not be granted in a new chapter 13 case if the debtor obtained a chapter 7 discharge within four years prior or obtained a chapter 13 discharge within two years prior.

Other creditors, however, may be reluctant to give you credit and may, in fact, lawfully refuse you credit because of your previous record. The fact of your bankruptcy may remain a part of your credit history for as long as 14 years under the terms of the Fair Credit Reporting Act. As a result, you may experience difficulty in getting credit except where high interest rates are charged. This is a significant result of bankruptcy and one you should think about carefully before you decide to file a petition in bankruptcy.

### **CAN A CREDITOR DENY ME CREDIT BECAUSE OF MY HUSBAND'S BANKRUPTCY?**

If you did not file a joint bankruptcy petition with your husband and you are applying for a loan which you alone are responsible for repaying, a creditor may not legally deny you the loan because of your husband's bankruptcy.

### **AM I A CREDITOR?**

You are a "creditor" of a debtor who has filed for bankruptcy when you have a "claim" against that debtor, meaning the debtor owes you money, products, or services.

Often the first time you learn that someone has filed bankruptcy is when you receive in the mail a document called "Order for Relief and Notice of First Meeting of Creditors." The debtor is required to list the names and addresses of all of his creditors so that they can be given written notice about the bankruptcy. Read the "Order for Relief and Notice of Meeting of Creditors" carefully because it lists important deadlines, the names and addresses of important persons involved in the bankruptcy (such as the attorney for the debtor), and it provides you with important information about your rights and obligations as a creditor. Another important person to note is the "trustee" of the debtor, who is appointed by the bankruptcy court to take care of the debtor's property during the bankruptcy.

The "Order for Relief and Notice of First Meeting of Creditors" will list a date for a "meeting of creditors." You can go to the first meeting of creditors, ask the debtor questions, hear what the debtor, his or her attorney, and the trustee have to say about how the case will proceed.

If you are a creditor of someone who you know has filed bankruptcy and you have not received any notice in the mail, you should immediately call the clerk's office of the Bankruptcy Court (801-524-6687). You may also go to the clerk's office – Room 361 (third floor) of the U.S. Courthouse at 350 South Main Street in Salt Lake City. You should request the debtor's file and look to see if (or how) you are listed as a creditor, and then immediately contact an attorney for advice about your legal rights and remedies. If you are not listed as a creditor, you must file a request with the court to place your name on the official mailing list for that bankruptcy case. You also may contact the attorney for the debtor and request that you be listed as a creditor. You will then receive notices and other materials related to the case.

### **WHAT KIND OF CREDITOR AM I?**

In most cases, in order to protect your claim, you or your attorney must quickly file a "Proof of Claim" in the debtor's case. The Proof of Claim will explain the reason the debtor owes you money, product or services, what the value is, what kind of creditor you are, and will identify any lien or security for your claim.

Some creditors are “secured” creditors. Their debts are secured by a lien or security given to them by the debtor. Another word for lien or security is collateral. A lien or security is usually “real property,” such as land and buildings, or “personal property,” such as cars, jewelry, or furniture. If you have a lien or security for your claim, you may, in some situations, get authorization from the Bankruptcy Court to get your property back from the debtor. Again, it is important that you hire an attorney to do this for you as the required proceedings are very technical and often complex.

Other creditors are “unsecured” creditors. Unsecured creditors do not have a lien or security for the debt owed to them and have fewer rights and power under the Bankruptcy Code. In general, unsecured creditors will be paid proportionally with all the other unsecured creditors after secured creditors are paid. This generally means that unsecured creditors get paid much less than secured creditors in bankruptcy. Consult an attorney to determine what rights you have as an unsecured creditor. Some creditors will have an administrative claim against the debtor. These claims include certain wage, salary, alimony, and child support debts. Checking the appropriate boxes on a proof of claim will identify your claim of priority.

## **WHAT CAN I DO TO GET MY MONEY FROM SOMEONE WHO DECLARES BANKRUPTCY?**

If someone owes you money, products or services, you will want to do everything you can legally do to protect and collect your claim. This is the reason you should immediately consult an attorney who is knowledgeable in bankruptcy law. The debtor can request relief under the Bankruptcy Code in several different ways. (See above, “What Types of Procedures Does the Bankruptcy Code Provide?”) Generally, rights and remedies of the creditors under the Bankruptcy Code depend on the type of proceedings in bankruptcy.

To best protect your claim against the debtor, do not delay. Determine what kind of creditor you are. You should promptly consult an attorney, file a Proof of Claim, and keep informed of the progress of the case. Most bankruptcy cases are resolved quickly, within three to six months after the beginning of the case. Others, depending on their complexity, can take much longer. In almost every case, interested creditors can help move the case along.

As soon as bankruptcy papers are filed, an “automatic stay” goes into effect which stops all efforts to collect money owed or pursue claims against the debtor. Efforts such as repossession and collection must immediately cease. Consult an attorney before you attempt to take any action against the debtor because the court may punish a creditor who violates the automatic stay through fines, penalties, etc. Under certain circumstances, a creditor can have the automatic stay modified by court order so that the creditor can take action against the debtor or the collateral.

Landlords and lessors are granted specific rights. If you are the landlord of a debtor, you have an entitlement to ongoing rents from the debtor which become due after the date the debtor’s bankruptcy was filed. Also, a landlord can continue or start eviction proceedings against a debtor if he or she does not pay rent after filing for bankruptcy. Again, because the procedures for accomplishing this are technical, you should consult an attorney.

## **WILL I GET MY MONEY BACK FROM A DEBTOR WHO DECLARES BANKRUPTCY?**

Whether you will get your money back from a debtor who declares bankruptcy depends on what kind of claim you have and the basis for the claim. For example, if the bankruptcy is a chapter 7, unsecured creditors may not get paid anything if the trustee determines that there are no assets from which creditors may be paid. If it is a chapter 11 or a chapter 13 bankruptcy and the person owes you wages, you will be in a higher priority in the order of payment of creditors. If you have a secured claim, you will either be paid the presently determined fair value for the item through the plan or you will get your collateral. For instance, assume you sold a car to A, who subsequently declared bankruptcy but who still owes you \$1,500 on the car, which has a fair market value of \$1,000. You should be able to either get paid \$1,000 through the plan or get your car back. If the debtor keeps the car and pays you \$1,000, your claim for the remaining \$500 goes into a pot with all the other unsecured claims and you will be paid proportionally. Creditors can contest the debtor’s valuation of their property if they believe it is too low.

Claims not paid out in bankruptcy cases are generally discharged, in other words, forgiven or erased. In some bankruptcy cases, certain claims of creditors are not

dischargeable. Under a chapter 11 or 7 bankruptcy, a debtor cannot be discharged from all debts. A debtor may still be responsible for debt incurred through false pretenses, embezzlement, torts (a fine a debtor has been ordered to pay for beating someone up, for instance), and student loans. Additionally, alimony and child support ordered by a court or in an agreement is not dischargeable. Many taxes are also non-dischargeable. If a debtor is not able to perform according to her chapter 13 plan because of “hardship” (for example, she loses her job or gets sick), the court has authority to grant her the same discharge that she would receive under chapter 7. You should contact an experienced bankruptcy attorney concerning these special rules.

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## JURY DUTY AND VOTING RIGHTS

### WHAT IS JURY DUTY?

In most court proceedings, a trial by jury is available to all United States citizens. The jury’s function is to decide the guilt or innocence of an individual in a criminal trial or to determine whether a damage award should be given in a civil trial.

If selected to serve on a jury, an individual has a responsibility to do so. By fulfilling this responsibility, fair and impartial trials are provided by one another’s peers. Jury duty is a crucial part of America’s judicial system, and each citizen should understand what the process involves.

### HOW IS AN INDIVIDUAL SELECTED AS A JUROR?

Utah law provides for a master jury list to be maintained and for individuals selected from the master jury list to serve as jurors in county and state court proceedings. The master jury list includes the names of individuals from each county who are registered to vote and hold a valid driver license.

Potential jurors are randomly selected from the master jury list. This random selection ensures that potential jurors consist of a fair cross-section of the community’s population where the court proceeding would be held. Any adult citizen, regardless of race, religion, gender, age, marital status, economic status, national origin, or sexual orientation, may be selected to serve as a juror.



## WHAT IS THE PROCESS AFTER AN INDIVIDUAL HAS BEEN SELECTED?

After an individual is selected as a potential juror, the clerk of the court where the proceeding would be held mails a juror qualification form to the individual. The individual must fill out the form honestly and correctly. Under Utah law, the individual must complete and return the form to the clerk of the court within ten (10) days. If the individual does not meet the requirements to be a juror, the individual still must return the form to the clerk of the court within the 10 days. The form is used by the court to determine whether the individual is qualified to serve on a jury. The court reviews the form and determines whether an individual is or is not qualified to serve as a juror. If an individual has a physical or mental disability which might affect the individual's ability to serve on a jury, he or she should return a physician's certificate of proof regarding the disability with the form.

If an individual fails to complete and return the form within the required 10 days, or if the individual intentionally misrepresents information on the form, the individual may have to pay a \$500 fine and/or serve thirty-days in jail.

## DOES AN INDIVIDUAL HAVE TO SERVE ON THE JURY IF SELECTED?

Even though an individual is on the master jury list, the individual may not qualify to serve as a juror. Under Utah law, a prospective juror must be a Utah resident over 18 years of age, a registered voter, a resident of the county in which the court proceeding would take place, and fluent in the English language (i.e. able to speak, read, and understand English). The court determines whether an individual is qualified to serve as a juror based upon the information submitted on the juror qualification form.

## WHAT REASONS WOULD DISQUALIFY AN INDIVIDUAL FOR JURY DUTY?

An individual may be disqualified or ineligible to serve on a jury for any one of the following reasons: (i) having been convicted of a felony; (ii) currently active in the military; or (iii) having a physical or mental disability which would affect the individual's ability to comprehend and understand the court proceeding.

Even if an individual does not qualify to serve as a juror, the individual still must complete and return the juror qualification form. The court will review the information on the form and determine whether the individual is qualified to serve as a juror.

## IS THERE ANY WAY FOR AN INDIVIDUAL TO BE EXCUSED FROM JURY DUTY?

Jury duty is an important responsibility of each eligible citizen. An individual may have unusual circumstances which would make it difficult for him or her to serve on a jury.

To be excused from jury service, an individual must show undue hardship, public necessity, or extreme inconvenience such as: the illness of a close family member for which help is needed; being the owner of a business whose busiest season would take place during the trial; or the member of a profession which is an integral part of everyday service to people in the community (e.g., doctor, fireman, police officer, etc.); or being the primary caregiver to small children full time.

It is not easy to be excused from jury service. The individual must make a request to the court that he or she be excused from jury service. The court determines whether the individual may be excused from jury service. The court may also postpone an individual's jury service. For example, the court may allow an individual to assist an ill family member and then require the individual to serve as a juror several months later.

## ARE THERE OTHER REASONS AN INDIVIDUAL MAY NOT BE ABLE TO SERVE?

If an individual is qualified to serve on a jury, the next step in the process is for the individual to be interviewed by the judge and/or the attorneys of both sides. This process of asking potential jurors questions is called *voir dire*. A potential juror will be asked to take an oath when being asked questions by the judge and/or attorneys. The judge or attorney may ask an individual questions about the specific case. For example, the judge or attorney may ask the individual if he or she knows any one who is involved in the case, or if the individual has read about the case in the newspaper, or

heard about the case on television. The questions are used to determine if potential jurors have any biases which would not allow the defendant to have an impartial and fair trial. After an individual has been asked questions, the judge and/or attorneys can excuse the individual based upon peremptory challenges, or challenges for cause.

An attorney may request the dismissal of a potential juror based upon a specific or detailed fact or situation that is known about that individual. There are no limits as to how many challenges for cause may be exercised; however, the judge has the discretion to accept or reject these challenges.

An attorney may also dismiss a potential juror by exercising a peremptory challenge. A peremptory challenge may be made for no reason at all. An attorney may simply excuse a potential juror based upon a “hunch” or feeling. The number of peremptory challenges is set by law.

### **IS AN INDIVIDUAL COMPENSATED FOR JURY DUTY?**

Under Utah law, a juror is compensated, by check, for both his or her travel expenses and the time spent in court. A juror receives \$18.50 for the first day he or she serves as a juror and \$49 for each subsequent day. The juror may also be entitled to travel expenses. For every four miles traveled over fifty miles, the juror receives \$1. Jurors may be entitled to a reasonable food allowance. Jurors also receive lunch breaks and other short breaks during the day. If the jury is in the middle of deciding a trial (a process which is called deliberation), meals will be provided to the jury.

### **WHAT IF AN INDIVIDUAL HAS TO WORK?**

If asked to serve on a jury, an individual will need to take time off work to attend the court proceeding. Some employers may or may not allow time off with pay. It is against Utah law for an employer to threaten, coerce, or fire an individual who takes time off of work for jury service.

If your employer does not permit you to attend jury service or threatens or fires you for doing so, you should contact an attorney. An employer who violates Utah law regarding jury service by employees may be held in criminal contempt and

may be fined up to \$500 and/or serve up to six (6) months in prison. If fired, an employee may sue his or her employer in civil proceedings for lost wages and the opportunity to return to work.

### **WHAT HAPPENS IF AN INDIVIDUAL CANNOT FINISH HIS OR HER JURY SERVICE?**

In the case of illness, an individual would not have to finish jury service. Depending upon the type of case being heard, dismissal of an ill juror is handled differently. In a felony case where an alternate juror is most likely available, the alternate juror would take the original juror's place, and the trial would go on as if nothing had happened. The alternate juror would have been listening to all evidence and testimony of the witnesses and would have been following the trial like all of the other jurors.

In criminal court proceedings, a unanimous verdict (i.e. all jurors must agree on the decision) must be reached to avoid a mistrial. If there is no alternate juror, and if a juror dies or is excused because of illness, then a unanimous verdict could not be reached, and a mistrial or dismissal of the case would result.

In civil court proceedings, three-fourths of the jurors on the jury must agree on the decision. Therefore, the jury could still make a decision without one juror.

### **WHAT DOES IT MEAN TO BE AN ALTERNATE JUROR?**

One or more jurors may be selected to serve as alternate jurors in a court proceeding. Alternate jurors are selected in the same manner as non-alternate jurors, have the same qualifications, are subject to the same examination and challenges, take the same oath, and also have the same power, function, facilities, and privileges as non-alternate jurors.

An alternate juror will listen and observe all of the court proceeding just as the non-alternate jurors. This makes it possible for an alternate juror, if needed, to take the place of a juror who is dismissed because of illness or other circumstances. If an alternate juror is not needed during the court proceeding, he or she will be discharged when the jury meets to make a decision.

## HOW MANY TIMES CAN AN INDIVIDUAL SERVE ON A JURY?

If an individual is being considered to serve on a jury, the maximum number of days the individual can be held eligible to serve is ten (10) — Monday through Friday, excluding weekends and holidays. If an individual is selected to serve on a jury, he or she must serve until the trial is over and the jury has reached a decision.

Once an individual has served on a jury, he or she would not usually be asked to serve again for two years. After the two-year period, an individual is placed on the master jury list again.

## HOW LONG IS JURY DUTY?

The length of court proceedings varies. A court proceeding may last one day, one week, one month, or even many months. If an individual has been selected as a juror, he or she must serve for the length of the court proceeding.

## WHAT CAN OR CAN'T AN INDIVIDUAL DO IF SELECTED AS A JUROR?

If selected, the individual must take an oath that he or she “will well and truly try the matter in issue between the parties, and render a true verdict according to the evidence and the instruction of the court.”

A juror is not allowed to talk with anyone about the case, including other jurors with whom he or she is serving. Jurors also are prohibited to read or view any information (such as television) which could bias his or her decision about the case. If a juror is ever approached by anyone who tries to influence his or her decision about the case, the juror should report the incident to the judge.

## COULD AN INDIVIDUAL SERVE ON A JURY IN FEDERAL COURT?

The jury selection process is essentially the same in federal courts as it is in state or county court. To be eligible to serve on a jury in federal court, there are some different

requirements. An individual must have lived in the judicial district for at least one year. In addition, an individual with a pending criminal charge, which is punishable by imprisonment for more than one year, is not eligible. An individual will be exempt from jury service if he or she is active in the armed forces or is a police officer, a fire fighter, or a public official. This exemption extends to any elected or appointed public official performing duties in an office of the executive, judicial, or legislative branches of federal, state, or local governments.

## HOW AND WHERE DOES AN INDIVIDUAL REGISTER TO VOTE?

Voting is a responsibility of each eligible citizen of the state of Utah. Voting allows an individual to help determine who will serve in his or her city, county, state, and federal government.

To be eligible to vote under Utah law, an individual must be a citizen of the United States, must have resided in Utah for at least thirty (30) days prior to the next election, and must be at least 18 years of age on or before the next election.

To register to vote, an individual must complete a voter registration form. An individual must honestly and correctly complete the information on the form. An individual may obtain and fill out the form at the driver license office or at the county clerk's office during regular business hours. An individual may also complete a registration form on the Internet or by mail. Voter registration forms are available at many banks, libraries, and political party offices. If an individual chooses to mail his or her registration, the form must be postmarked at least twenty (20) days prior to the election.

After an individual has submitted a voter registration form, he or she will receive a confirmation letter or card, usually from the county clerk's office, showing that he or she is registered to vote. If an individual is not qualified to vote or if the voter registration form is incomplete, he or she will be notified by the county clerk. If the individual does not know whether he or she already is registered to vote, the individual may contact the county clerk's office.

If an individual moves or changes his or her name, the individual will need to re-register to vote. The voter registration form has a specific section that the individual will need to fill out for such changes.

The voter registration form also includes a section for an individual to identify his or her political party. This section is optional. An individual may choose to fill out this section but is not required to do so.

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## ABUSE AT HOME: HOW TO PROTECT YOURSELF AND YOUR LOVED ONES

Utah laws protect victims of abuse that occurs among family members and in the home. “Cohabitant abuse” laws refer to domestic violence. The abuse, neglect, and exploitation of older and vulnerable adults are addressed by other laws discussed at the end of this chapter. Whatever the source of the abuse, there are legal ways to protect yourself and the ones you love.

### WHAT IS A COHABITANT?

A “cohabitant” is: 1) a married person under 18 years of age, or 2) a person 16 years of age or older who: a) is or was married to the other person; b) lives with or lived with the other person; c) is related to the other person by blood or marriage; or d) has a child with the other person. This does not include the relationship of a parent to a minor child nor does it include the relationship of minor siblings to each other.

### WHAT IS ABUSE AND DOMESTIC VIOLENCE?

Under Utah law, “abuse” means attempting to cause or causing physical harm or making you fear imminent physical harm. “Domestic violence” means any criminal offense involving violence or physical harm or threat of violence or physical harm. The cycle of domestic violence, however, can involve a variety of abusive behaviors including verbal abuse. The following examples describe some of the ways a person can be abused, generally speaking. Not all abuse is a criminal act.

- Physical: shoving, slapping, hitting, punching, kicking, choking, shaking, using weapons or objects that can cause harm, restraining or threatening to harm you, your child, a relative or a friend.
- Sexual: acting violently or physically harming you while having sex, forcing unwanted sex, forcing sex after violent action, raping you or using objects to cause harm during sex.
- Psychological: name calling, ridiculing, criticizing, manipulating, threatening, intimidating, accusing you of having an affair or controlling your actions or friendships. (Psychological abuse by itself may not be a crime unless accompanied by threats of physical harm or actual physical/sexual abuse.)

You need to know that this pattern of abuse or cycle of domestic violence is about power and control; domination and fear. Anger does not cause it; alcohol and drugs do not cause it; stress does not cause it. All of these factors may contribute to a person's frustrations, but *violence is a choice made by the abuser* about how to deal with a problem or situation. It may be a learned behavior from childhood or one learned in adulthood. Violence is not acceptable as a way to deal with family problems.

## WHAT REMEDIES ARE AVAILABLE?

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A protective order is one remedy that may be available when someone faces abuse or domestic violence. A protective order is an order issued by a court giving the victim of domestic violence protection by preventing the abuser from having contact with you, threatening you, coming to your home, school, workplace, and any other place the court thinks is necessary to protect you and your family or others living in your home. There are two kinds of protective orders, civil and criminal, and you may be entitled to both. Either kind of order is entered on the statewide domestic violence network so police in other parts of the state can see if there is a protective order in effect.

**Civil Protective Orders.** Civil protective orders may be obtained whether or not criminal charges are filed. You must be a cohabitant of the other person and the other person must have physically harmed you, attempted to physically harm you, or threatened you with physical harm, or you must be the victim of a criminal domestic violence offense.

Forms for civil protective orders are available in the district court clerk's offices, and you may file the paperwork where you reside, where the incident occurred, or where the abuser lives. You can find the location of district court clerk's offices by calling 801-578-3800 or by looking online at [www.utcourts.gov/directory](http://www.utcourts.gov/directory). There is no cost for filing a petition, serving the papers on the abuser, or for copying the order for service.

The district court clerk's office will help you fill out the form, but they cannot provide legal assistance or advice. You do not have to hire a lawyer. However, the clerk's office will provide you with a list of legal service organizations and telephone numbers who may represent you if you want a lawyer. You can also hire your own lawyer.

There are two types of civil protective orders. The first one is called an "Ex Parte" Order which can be issued the day you ask for a protective order without the abuser being present. Once the abuser has been given a copy of the order, it is effective until the court hearing is held, where the abuser can be present. At the hearing, which is held within twenty days, the judge will decide whether to issue the second type, which is called a Protective Order, for as long as the court thinks is necessary for your protection. This protective order has some provisions that may deal with child support, alimony, visitation, etc., which last for 150 days. A violation of any of those provisions is not a criminal offense. You must go back to the judge for enforcement. However, the protective order has some other provisions, the violation of which may be a criminal offense. Those provisions include not contacting you, not threatening or harming you, staying away from your home, work, school, etc. If any of the criminal provisions are violated, you should call the police immediately. The criminal provisions may continue in effect for as long as three years. If you want to change the conditions of the order or re-establish contact with the other person, you must go to court to change the order or to dismiss it; you and the other person cannot simply ignore the court order. Only the judge has the power to change it or terminate it.

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**Criminal Protective Orders.** Criminal protective orders are available to the victim only if the criminal process begins with the abuser being: (1) arrested for a domestic violence offense; (2) charged in court with a domestic violence offense; (3) arraigned before the court on a domestic violence offense;



or (4) convicted of a domestic violence offense. There are three types of criminal protective orders: Jail Agreement No Contact Order; Pre-Trial Protective Order; and Sentencing Protective Order.

For the Jail Agreement No Contact Order, the abuser must be arrested and then taken to jail. The abuser cannot be released on bail, on recognizance or otherwise unless the abuser agrees in writing or is ordered by the court to have no personal contact with you, not threaten or harass you, and not come to your home or where you are temporarily staying. This order is good until the close of the next court day. The abuser can be re-arrested for violating this order.

Criminal charges must be filed against the abuser in order for a Pre-Trial Protective Order to be issued. If you want the protections of the jail agreement order to continue or if you want a criminal protective order to protect you during the course of the criminal proceedings, you should contact the prosecuting attorney's office or appear in court to tell the judge why you want this order to continue or to be issued. If the court decides to issue the pre-trial protective order, you will be given a certified copy of it. Violation of this order is a separate criminal offense, and the protection continues until the abuser is convicted or acquitted.

The abuser must be convicted (found guilty by the judge or jury or plead guilty or no contest) of the domestic violence offense in order for a Sentencing Protective Order to be issued. After conviction, you may request the court to continue or issue the criminal protective order. This order can protect you for as long as the abuser is under the authority of the criminal court. Violation of this order is a separate criminal offense.

### WHAT ABOUT MY KIDS?

Your children can be protected under your civil or criminal protective order. Counseling services may be available in your area for children through your Division of Child and Family Services or through your local domestic violence shelter agency. Acts of domestic violence committed in the presence of children is considered child abuse and the abuser can be charged criminally. (For more information about child abuse, see the chapter about children in this book.)

### WHAT HAPPENS IF I CALL THE POLICE?

When an officer responds to a call, if the officer has probable cause (good reason) to believe that a domestic violence crime has been committed, the officer must begin the criminal charging process against the abuser by either issuing a citation to the abuser or by arresting the abuser. It is not your decision whether or not the abuser is arrested. However, the officer must arrest and take the abuser into custody if the officer has good reason to believe that the abuser may continue to hurt you, or the abuser has recently caused serious injury to you, or the abuser used a weapon against you, or the abuser violated a protective order. The officer must also arrange for you and your children to obtain emergency housing, shelter and/or medical attention. A copy of the police report written by the officer is available to you at no cost. Following the incident, you should contact the police department to request a copy of the police report. The police will try to notify you if the abuser is released from jail.

The police reports are forwarded to the local prosecutor's office who will determine if there is enough evidence to prosecute the abuser. If the prosecutor decides to file criminal charges, you do not have a right to "drop the charges." If you have concerns, you may want to discuss them with the prosecutor's office. Criminal charges are brought by the state, county, or city, not by the victim.

While the laws regarding domestic violence are tough, the laws also provide for treatment programs and services related to this abuse. Treatment programs have shown that abusive behavior can be changed, but the abuser must be willing to change as well as complete the treatment program.

You may be entitled to funds from the Office of Crime Victim Reparations for medical expenses, counseling, relocation, etc., if the matter was reported to the police and you are cooperating with the investigation. You can call their toll-free number (1-800-621-7444) for further information.

### IF I HAVE QUESTIONS, WHO CAN I CALL?

Utah has a toll-free hotline number that anyone (victims, abusers, concerned friends or neighbors, children or anyone else) can call for answers to questions or for information on resources available in a particular area. The hotline can refer

you to other agencies for additional assistance. Call 1-800-897-LINK (1-800-897-5465).

### **WHO IS A VULNERABLE ADULT?**

A “vulnerable adult” is: (1) any person 65 years of age or older, or (2) any person 18 years of age or older who has a mental or physical impairment which substantially affects that person’s ability to: (a) provide personal protection; (b) provide necessities such as food, shelter, clothing, or mental or other health care; (c) obtain services necessary for health, safety, or welfare; (d) carry out the activities of daily living; (e) manage his/her own resources; or (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

### **IS THERE A STATE AGENCY THAT PROVIDES SERVICES FOR VULNERABLE ADULTS?**

Yes. Adult Protective Services (“APS”) provides social services to vulnerable adults in need of protection to prevent or discontinue abuse, neglect, or exploitation. Services are voluntary unless court ordered. The goal of APS is to provide the “least intrusive” intervention. APS is mandated to investigate allegations of abuse, neglect, or exploitation of vulnerable adults and to do whatever is needed to stop it. They investigate complaints of financial exploitation, abandonment, medical neglect, physical abuse, physical neglect, institutional neglect, nonsupervision, sexual abuse, and emotional or psychological maltreatment.

### **WHAT SHOULD I DO IF I BELIEVE A VULNERABLE ADULT IS BEING ABUSED?**

If you have reason to believe that a vulnerable adult has been the subject of abuse, neglect, or exploitation, you must immediately notify APS or the nearest law enforcement agency. Anyone who in good faith makes a report or otherwise notifies APS or a law enforcement agency of suspected abuse, neglect, or exploitation is immune from any civil or criminal liability in connection with the report. However, any person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor. The identity of the person reporting to APS may not be released to anyone except APS.

To contact APS, in Salt Lake County call 801-264-7669, or throughout the rest of Utah call 1-800-371-7897. You may find more information about APS on the website for the Utah Division of Aging and Adult Services, [www.hsdaas.utah.gov](http://www.hsdaas.utah.gov).

### **ARE ABUSE, NEGLECT, AND EXPLOITATION CRIMES?**

Yes, they can be. Laws passed in 1996 and 2002 specify the kinds of crimes and penalties for abusing or neglecting vulnerable adults. These laws also cover the situations where vulnerable adults are exploited financially or sexually. Exploitation situations often involve abuses of the vulnerable adult’s “power of attorney,” deceiving or intimidating the vulnerable adult to gain their property or other assets and depletion of the vulnerable adult’s assets for the benefit of someone other than the vulnerable adult.

### **WHAT CAN I DO TO HELP PROTECT AGAINST THE ABUSE, NEGLECT, OR EXPLOITATION OF A VULNERABLE ADULT IN A CARE FACILITY?**

If you believe that a resident in any facility licensed by the Utah Department of Health is in danger of being abused, neglected, or in any way exploited, you must report your suspicions to APS. You may also seek help from the Long-Term Care Ombudsman’s Office. Long-Term Care Ombudsmen investigate complaints from or on behalf of residents of such facilities as assisted living residences and nursing homes. Often, the ombudsmen will coordinate efforts with APS. However, the ombudsmen can also advocate on behalf of the resident with the facility or with other residents or even with the resident’s family members.

To locate your local office of the Long-Term Care Ombudsman, call your local Area Agency on Aging. For information on Area Agencies on Aging, contact the Utah Division of Aging and Adult Services at 801-538-3910, or [www.hsdaas.utah.gov](http://www.hsdaas.utah.gov).

## WHERE CAN AN OLDER ADULT GO TO GET MORE HELP?

Most older persons prefer to remain at home for as long as possible so long as they are safe. The single best source of information for available supportive services is your local Area Agency on Aging (“AAA”). There are twelve AAAs throughout the state of Utah. These agencies can help any person 60 years of age or older with information and referral resources, geriatric care management, caregiver support services, and supportive services in the home like Meals on Wheels, chores, and transportation. In Utah, the AAAs can also provide information about APS and the Long-Term Care Ombudsman’s Office.

If a person is not capable of handling his or her own decision-making and care, then it may be necessary for someone to become that person’s guardian and/or conservator. A guardian and/or a conservator must be appointed by the court in the county where the person in need lives. A guardian has the legal responsibility to handle the well-being and personal decision-making for the person in need of protection. A conservator has the legal responsibility to handle the protected person’s finances and property. If the person in need of protection has no relative or friend who is willing to serve as guardian/conservator, then the Office of Public Guardian may be able to intervene.

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To locate your local Area Agency on Aging, contact the Utah Division of Aging and Adult Services at 801-538-3910, or [www.hsdaas.utah.gov](http://www.hsdaas.utah.gov).

To contact the Office of Public Guardian, call 801-538-8255, or check the website at [www.hsop.utah.gov](http://www.hsop.utah.gov).

For more information about legal help with obtaining a guardianship, conservatorship, or other protective services, contact your local Area Agency on Aging, the website of the Utah Division of Aging and Adult Services at [www.hsdaas.utah.gov](http://www.hsdaas.utah.gov) and click “Legal Resources,” or call Utah Legal Services at 801-328-8891 or 1-800-662-4245.

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## CRIMINAL LAW

*This chapter relates only to state or local jurisdictions and does not discuss the Federal judicial system which is different.*

### WHAT IF I AM ARRESTED?

An arrest for a state or local offense can be made by citation or by transportation to jail. If you have verifiable contacts in the community and the offense is a minor one, an arrest can be made by citation. If you are arrested by citation you sign a ticket and promise to appear voluntarily no sooner than five days and no longer than fourteen days from the date the ticket is issued.

When you appear at the court you are arraigned before a judge. If you do not have sufficient contacts in the community or if the crime is serious, you may be transported to jail. Once there you may be “booked.” Booking consists of entering the alleged crime in an official ledger and obtaining photographs and fingerprints of the suspect. Under certain circumstances, you may be released or required to post bail at this point on a No Bail Release (NBR).

### WHAT DO I DO AFTER ARREST?

You will be allowed to make one phone call to your family, friends, lawyer, or bail bondsman. If the police question you about the alleged crime while you are in jail, you should be given your constitutional rights to remain silent and to speak with a lawyer before you answer any questions relating to the case. These are called *Miranda* rights because they were established in a court case where the defendant’s name was *Miranda*. Voluntary or contemporaneous statements you make about the alleged crime do not fall within the protection of the *Miranda* case and may be used against you in court.

At the time of arraignment the judge reads the charges against you, sets the conditions for release, if applicable, and appoints a public defender if you cannot otherwise afford an

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attorney. Anyone arrested or accused of a crime is entitled to a lawyer. If you cannot afford to hire an attorney *and* there is a likelihood that you may be required to serve a sentence, the state or local prosecuting entity may provide an attorney. You may be required to pay some of the costs of counsel at the end of the case if the representation results in a plea or conviction of the charges.

## HOW CAN I BE RELEASED?

The judge who presides at arraignment makes the determination about conditions that will be required prior to release from jail. Release until the trial might be conditioned upon any of the following:

- Bail
- Supervised release
- Personal recognizance
- Agreeing to abstain from drugs and/or alcohol
- Turning over your passport
- Agreeing to no contact with specified persons
- Other conditions as deemed appropriate by the court

If you are released on bail, an individual or bail bondsman posts money with the court to ensure that you will return for trial. “Supervised release” in Salt Lake County is handled through pretrial services. In other parts of the state it is handled through a local agency or a responsible third party. “Personal recognizance” means you are released on your promise to reappear.

## WHERE WILL THE ARRAIGNMENT OCCUR?

Arraignment takes place in the county where you are arrested. If the offense occurred in a different county, you are transported to that place for arraignment, since according to Utah law a trial is held in the county where the offense occurred.

## HOW ARE CRIMES CLASSIFIED?

The classification of a crime is based on its seriousness and on whether or for what period of time jail can be imposed. The most serious crime is capital crime (punishable by death). Felonies, the next level of crime, are divided into the subcategories of first degree (five years to life and/or \$10,000), second degree (one to fifteen years and/or \$10,000), and third degree (zero to five years and/or \$5,000). Misdemeanors are less serious and are divided as class A (zero to one year and/or \$2,500), class B (zero to six months and/or \$1,000), and class C (zero to ninety days and/or \$750). Infractions are the least serious type of crime and have a maximum fine of \$750 and no jail sentence. If you fail to follow the probationary conditions of the court, you may be held in contempt for failing to obey a court order and the judge can sentence you to jail time.

## HOW ARE CHARGES BROUGHT AGAINST ME?

Charges must be by information or indictment. An information is the formal charging document that states your name, the alleged crime and the classification of the crime. In Utah the judge can arraign you from the summary of the charges listed on a citation. However, before the trial begins you should receive a copy of the formal document filed against you. If the crime is greater than a misdemeanor, the judge requires a formal information and probable cause statement, which summarizes the charges against you and the basis upon which you appear to be the responsible person. You can waive your right to have the formal information read at any of the proceedings. If you do not waive this right, the judge will read the formal document to you. If the charge is a misdemeanor, you can waive the right to an information and allow the prosecution to proceed on citation.

An indictment is a charging document issued by a grand jury. This method is seldom used in the State of Utah.

## WHAT HAPPENS NEXT IF I AM ACCUSED OF COMMITTING A FELONY?

If you are charged with a felony, the next hearing, if you are in Salt Lake County, is a roll call hearing. At this hearing the defense evaluates the prosecution’s case and decides

whether to waive the preliminary hearing. If the hearing is waived, the judge sets a date to take a plea and set the case for disposition. The case is then bound over to the district court. If the preliminary hearing is not waived, a date for the preliminary hearing is set. In counties other than Salt Lake the case will be set directly for preliminary hearing. At the preliminary hearing the circuit court judge hears evidence presented by the prosecution and determines whether there is probable cause to have you stand trial for the alleged offenses. Many defense attorneys use this hearing to test the strength of the state's witnesses. The state does not try the whole case at this point, but it must put on enough of the case to satisfy the judge that there is reason to believe that a crime was committed and that there is sufficient reason to believe you are the responsible person. If the judge finds the evidence sufficient, you are "bound over" to the district court. At the district court you are arraigned or asked to enter a plea to the charges. Your plea must be guilty, not guilty, or *nolo contendere* (no contest) in Utah. If you refuse to enter a plea, the court will enter a "not guilty" plea on your behalf. Once the plea is entered, the judge sets a pretrial conference date and then a trial date. All of this process is governed by the right to a speedy trial.

At the trial the state must establish the defendant's guilt "beyond a reasonable doubt." The judge or jury then reaches a verdict. If the defendant is found guilty, he or she is sentenced in no less than two nor more than forty-five days unless he or she waives that right. During that time, a presentence report may be ordered. The presentence report is reported by Adult Probation and Parole or a similar agency and includes information about the defendant and a recommendation for sentencing based on a variety of factors including past criminal behavior and the nature of the current offense.

### WHAT IF I WANT TO PLEA BARGAIN?

The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called "plea bargaining," is an essential component of the administration of justice. Properly administered, plea bargains are encouraged and reduce the case load on the judicial system. Therefore, plea negotiations are allowed in the courts. The recommendations that the prosecutor might make to encourage a plea are reductions of charges, dismissal or counts for pleas to other

counts, or simply recommendations on the length and/or type of sentence to be imposed. The judge is not required to follow the recommendations of the prosecutor or defense attorney; however, a plea negotiation can be placed on the record before a defendant enters a plea and the judge will/must indicate an unwillingness to follow plea negotiations involving dismissal of charges for a plea before the defendant is required to enter his or her plea.

Any guilty plea, whether a straight guilty plea or a plea of no contest, must meet three requirements. Such a plea must be voluntary and intelligent, it must be supported by a factual basis developed on the record, and it must satisfy the legal elements of the crime. A no-contest plea is the same as a guilty plea for the purposes of punishment. The advantage to the defendant of the no-contest plea is that, unlike a guilty plea, it cannot be used against a defendant as an admission of guilt in a subsequent criminal or civil case. If, for some good legal reason, you want to withdraw a plea, you must ask the court in writing to do so before sentencing is announced.

### WHAT ARE MY RIGHTS TO APPEAL?

An appeal may be automatic or discretionary, depending on the level of the original trial court and the type of crime. In Utah, all cases except capital cases and first degree felonies are heard by the court of appeals. Capital cases are directly appealed to the Supreme Court. The Supreme Court will also hear other appeal cases that have a significant effect. An appeal must be filed within thirty days of the entry of the sentence.

### WHAT IF I AM THE VICTIM OF A CRIME?

Victims of crime should contact the police immediately and give any information they have about the responsible person. If the person is still at the scene, the officer may initiate charges with the misdemeanor citation. If the crime is too serious for a citation or if follow-up is necessary, a detective is assigned to the case. He or she obtains the necessary information and screens the case with the appropriate prosecuting agency.

### AS A VICTIM, MUST I GO TO COURT?

If you report a crime to the police and a criminal charge is filed, you may have to appear in court. As a victim, you do



not need to hire your own lawyer. The case is filed in the name of the city where the offense occurred, or in the name of the state of Utah. The city or county attorney handles the case for the city or state. Technically, you are only a prosecution witness as a victim.

### **AS A VICTIM, DO I NEED AN ATTORNEY FOR A CIVIL CASE?**

You should talk to a private attorney about the possibility of bringing a civil suit against the defendant to obtain a money judgment for the damages and suffering caused you.

### **AS A VICTIM, WHAT ELSE SHOULD I KNOW?**

There is a relatively hidden world that exists in criminal law called “discretion.” The police, the prosecutor, and the courts all have varying degrees of power to “push” a case or to drop it altogether, depending upon the stage the case has reached. Their decisions can have as much significance for the accused as any opinion delivered by a Supreme Court. For example, a police officer can decide not to report a first offender (usually a minor case such as speeding), a prosecutor can refuse to accept a plea, and a judge can divert a case out of the criminal system.

The criminal justice system is designed to serve justice and does not always right every wrong. Beware of the limitations of the system, but do not hesitate to use it if you are victimized.

## **CHART OF COURT PROCEEDINGS**

### **FELONY:**

(punishable by death or imprisonment in prison)

### **MISDEMEANOR:**

(punishable by imprisonment in local jail and/or a fine)

### ARRAIGNMENT

1. Be advised of constitutional rights.
2. Receive copy of complaint.
3. Enter plea of not guilty.
4. Appointment of counsel or request continuance to obtain own counsel.
5. Bail setting.

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*Case may be settled prior to trial by plea bargain.*

### PRELIMINARY EXAMINATION

1. If an information or indictment is filed, hearing is held to determine if probable cause exists to hold defendant to answer on the charges. (If grand jury indictment is filed, defendant may not be entitled to this hearing.)
2. Magistrate may dismiss case if evidence is insufficient.

*Case may be settled prior to trial by plea bargain.*

### TRIAL

*(Same general procedures as in misdemeanor cases)*

### TRIAL

1. Jury selection. (If court trial is conducted, jury waiver by defendant should be made.)
2. Opening argument by counsel.
3. Prosecution presents evidence such as clothing, documents, and demonstrative objects.
4. Defense presents evidence (or may elect not to present any evidence.)
5. Closing arguments by counsel.
6. Jury instructions given by judge.
7. Verdict is rendered (guilty/not guilty) or a mistrial is declared.

### SENTENCING

1. Court usually refers defendant to probation office for pre-sentence report to include defendant's background, prior criminal record, and recommendation as to punishment.
2. Sentencing hearing usually occurs within three to four weeks after conviction either by plea bargain or guilty verdict rendered at trial

### SENTENCING

*(Same general procedures as in felony cases)*

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## FINDING A LAWYER

### WHAT SHOULD I DO IF I NEED A LAWYER AND DON'T KNOW ONE?

There are a number of ways to find a lawyer to help you with your legal needs. Generally, when looking for a lawyer you will want to find one that has the right practice experience to serve your needs and that you feel comfortable sharing your information. Once you find the right lawyer you will want to obtain a written "letter of engagement" or "fee agreement" outlining the relationship between you and your lawyer.

**Utah State Bar / LegalMatch Service** The Utah State Bar cannot give you legal advice directly; however, the Bar does have a service available to help you find a lawyer to meet your specific legal needs. You can access this service online at [www.utahbar.org/public](http://www.utahbar.org/public). With LegalMatch service, you are given the ability to confidentially and thoroughly review the experience, track record, availability, and fee structure of pre-screened lawyers who match your needs before deciding whom to contact. There is no obligation to hire an attorney, and this service is free to consumers.

For those individuals whose disability prevents access to the Internet, LegalMatch maintains a toll-free number: 1-866-661-5342. For all others wishing assistance through this call-in service, there will be a fee.

**Tuesday Night Bar** The Young Lawyers Division of the Utah State Bar sponsors a free legal clinic called Tuesday Night Bar. This free legal clinic gives you the opportunity to meet with a volunteer attorney for approximately fifteen minutes to discuss your legal problem or to determine if you have a valid legal claim. The volunteer attorney is available to answer questions that you may have about your rights. If further assistance is required, the Tuesday Night Bar has a list of attorneys to refer individuals to. Volunteer attorneys are not permitted to obtain any clients from the Tuesday Night Bar for their own practice.

## WHAT SHOULD I KNOW ABOUT ATTORNEY'S FEES?

Lawyers use a variety of methods to set fees, and many require a retainer. As you consider hiring counsel, the things you need to think about is the type of fee arrangement, the total cost of the representation, and whether the attorney requires new clients to pay a retainer. Make sure you understand the terms of the fee arrangement; don't be embarrassed to ask questions and make alternative suggestions. Remember that you do not have to agree to everything the attorney proposes, and if you are not comfortable with any part of the proposed agreement, you need not hire that particular attorney.

Clients should always receive the basis or rate of the fee in writing. Whichever arrangement you and your lawyer agree upon, you should make sure that you have a clear understanding of what the fee will be.

### RETAINER FEE

Retainer fees are advanced payment based on an hourly rate or fixed fee. Clients put money into a special account, and the lawyer deducts fees as services are completed. The client is responsible for reviewing the account periodically. The client should be aware that the retainer fee is generally non-refundable. However, if the client fires the attorney or decides not to pursue the legal matter, you may be entitled to a refund for fees you have paid that the attorney did not actually earn.

### HOURLY FEE

Sometimes there is no way of knowing at the outset what a particular legal matter will involve. In cases where a lawyer cannot accurately estimate a total fee, an hourly rate is often the best arrangement. An hourly fee might also be desirable when a client wishes to have a lawyer do some preliminary research and give a legal opinion regarding a question or problem (for example, whether to bring a lawsuit). Because hourly fees charged by lawyers vary widely depending upon experience and location, it is important that you have a clear understanding of the fixed rate per hour before agreeing to this arrangement.

The attorney keeps track of the amount of time spent on the case, including telephone conferences, document preparation, and legal research. Some attorneys charge more per hour for certain kinds of activities, such as going to court. You are entitled to know the amount of the hourly rate. It is a good idea to ask the attorney for a written fee agreement that spells out what the attorney will do for you, and how much you will pay per hour for the attorney's services and when you are expected to pay the bill, and whether the attorney charges interest if the bill is not paid within the agreed-upon time. That way, you will have something to refer to later if you have a question about the rate. If the fee is going to be more than \$750, the attorney is required to have the fee agreement in writing for you.

### FLAT FEE

The flat fee is a specific amount of money for which a lawyer agrees to perform specific legal services. For example, a lawyer may charge a flat fee of \$300 for a simple uncontested divorce, a flat fee of \$600 to incorporate a small business, or a flat fee of \$150 to draft a simple will. A flat fee arrangement usually implies that the lawyer will render the "customary and necessary" legal services that another lawyer in the same area would render in the same kind of case. It is very important that you and your lawyer have a clear agreement in writing as to what expenses a flat fee does and does not cover. Fixed or flat fees, similar to 'non-refundable retainers' must be earned; any unearned portion must be refunded.

### CONTINGENT FEE

Some attorneys accept cases on a contingency fee basis. This means that the attorney collects a fee only if the case is successfully resolved and money collected on your behalf. Attorneys are not allowed to collect contingent fees in divorce cases and criminal cases. The kinds of cases for which attorneys sometimes agree to work on a contingent basis include civil lawsuits such as personal injury cases and collections actions. The amount of the percentage may be less if the case is concluded in its early stages. Contingent fee agreements must be in writing and the agreement must identify the percentage that the lawyer will collect. The agreement must also specify whether the expenses paid by the attorney (such as the cost of hiring someone to serve papers on the opposing party) be deducted before or after the contingent fee

is calculated. The agreement should also address how the fees will be calculated if the attorney/client relationship ends before the conclusion of the case.

## STATUTORY FEE

A statutory fee is a fee set by law. Some legal work requires the court to set or approve the fee, i.e. probate matters.

## FEES SET BY COURT ORDER

A court may order one party to pay the attorney fees of the other party. Ask your attorney whether this possibility exists in your case, either for you or against you. If the possibility does exist, ask your attorney how this possibility affects your obligation to pay your own attorney.

## OTHER COSTS

In addition to a lawyer's fees, you might be expected to pay certain expenses. Review with the attorney carefully to see which expenses are included in your legal fee and which expenses incur additional expenses.

A client generally pays for the following expenses:

- photocopying charges
- long distance telephone charges
- courier, postage, and overnight delivery charges
- deposition expenses
- filing fees
- sheriff's and constable's fees
- investigative expenses
- court reporter and expert witness charges
- reasonable travel and transportation charges

A client usually does not pay the following expenses, unless under special circumstances:

- standard secretarial and office staff services

- standard office supplies
- local telephone charges
- in-town meals
- first-class travel costs and out of town meals without restrictions

## WHAT IF I CANNOT AFFORD AN ATTORNEY?

In some circumstances, you may qualify for free legal services. In many criminal cases, you have a legal right to an attorney. However, in civil cases, like divorces, you have no right to an attorney. There are some organizations that provide free legal services and advice to clients in civil matters. What follows is a listing of these agencies along with the types of services they offer.

## UTAH LEGAL SERVICES

Utah Legal Services provides attorneys for those individuals who qualify for their assistance. Utah Legal Services' main office is located in the Community Legal Center, 205 North 400 West, Salt Lake City; Utah. Legal Services also has offices in Provo, Ogden and Cedar City. Low-income Utahns qualify for assistance depending upon their household's income and assets, the type of legal problem, and whether that legal problem is within Utah Legal Services current list of priority cases. In most cases, income must be at or below 125% of the current federal poverty level for the household's size. A person may also qualify based upon age or the nature of the legal problem without regard to the household's financial circumstances. To determine if you qualify for services call (801) 328-8891 or toll free at (800) 662-4245. They can also be found online at [www.uls.state.ut.us/uls](http://www.uls.state.ut.us/uls).

## LEGAL AID SOCIETY OF SALT LAKE

Legal Aid Society of Salt Lake is a private non-profit organization that provides legal representation to individuals with family law cases and those who need a protective order in the Third District Courts in Salt Lake County.

"Fee for service" for low-income families is available through Legal Aid Society. Under this plan, Legal Aid will



charge a client fee for low-income family law cases based on household income relative to the federal poverty rate. Because of the limited revenues that the “fee for service” will generate, Legal Aid will only accept and prosecute cases involving simple property issues such as a marital home, simple financial accounts (i.e. bank checking and savings accounts), pension and retirement accounts, and personal property such as household furnishings, vehicles, personal effects, etc.

There is a short waiting list to start a family law case. To get on the list, call (801) 328-8849 or come to Legal Aid’s office at the Community Legal Center 205 North 400 West, Salt Lake City, Utah. If you feel your case is an emergency, or if you have been served with legal papers, come to the office and complete an “emergency application.” Legal Aid’s web site, with more information, is located at [www.lasslc.org](http://www.lasslc.org).

## DISABILITY LAW CENTER

The Disability Law Center serves to protect the rights of people with disabilities in Utah. The services focus on resolving issues surrounding disabilities such as; discrimination, employment, access and freedom from abuse. If you feel that you have been discriminated against because of your disability please contact the Disability Law Center at the Community Legal Center 205 North 400 West, Salt Lake City, Utah 84103 or call 1-800-662-9080 (Voice) or 1-800-550-4182 (TTY) or online at [www.disabilitylawcenter.org](http://www.disabilitylawcenter.org).

## AMERICAN CIVIL LIBERTIES UNION

The American Civil Liberties Union specializes in problems based upon violations of civil liberties (such as your right to free speech) or discrimination (if you’ve been fired so they can hire a man, for instance). If your case falls within the ACLU’s range of interests and would clarify the law in what it considers to be a needed area, it may assign an attorney to represent you without charge, no matter your economic status or family income may be. The ACLU is located at 355 North 300 West, #1, Salt Lake City, Utah 84103, (801) 521-9289, [www.acluutah.org](http://www.acluutah.org).

## PRO SE CLINICS

If you find that you cannot afford an attorney and do not meet the eligibility requirements of the above agencies,

there are clinics around the state that are set up to help self-represented litigants. For a complete listing of clinics visit [www.utcourts.gov/howto/legalassist](http://www.utcourts.gov/howto/legalassist). If you do not have access to the Internet you may call the Utah State Bar at (801) 297-7049.

## ONLINE COURT ASSISTANCE PROGRAM

The Utah Online Court Assistance Program (OCAP) is the official state of Utah website for assistance in preparing court documents if you are not able to have an attorney draft them for you. Documents can be prepared for divorce, landlord tenant, guardianship of a minor, or protective orders. You may use this program for free. If you file documents created by the program with the court, a \$20.00 fee in addition to any court filing fees will be charged at that time. This program is a service of the Utah Courts and State Legislature. You may obtain the documents at [www.utcourts.gov/ocap](http://www.utcourts.gov/ocap).

## MEDIATION

Mediation is a process in which a third party neutral assists disputing parties in negotiation an agreement satisfactory to both parties. The decision making power rests with the parties themselves. The mediator assists the disputing parties in defining and clarifying issues, reducing obstacles to communication, exploring possible solutions and reaching a mutually satisfactory agreement. Mediation presents the opportunity to peacefully express conflict and to “hear each other out.”

Community mediation offers constructive ways to resolve conflicts between individuals, groups and organizations. It is an alternative to litigation, avoidance, destructive confrontation or violence. It gives people in conflict an opportunity to resolve their disputes and control the outcome. It is designed to preserve interests and maintain relationships. For more information please visit [www.utahdisputeresolution.org](http://www.utahdisputeresolution.org) or call (801) 532-4841.

## WHAT CAN A LAWYER DO FOR ME?

Because you do not have an attorney’s extensive knowledge of the law, you may not be aware of how much a lawyer can do to help in a legal situation. A lawyer can help keep you

out of legal trouble, assure that your legal transactions are handled properly, or assist you if you should get into legal difficulty. Certain transactions should never be undertaken without a lawyer. Among these are adopting a child, buying or selling property, filing for bankruptcy, making or changing a will, starting a business, getting a divorce, facing a lawsuit against you, or suing someone else (unless in small claims court as described in chapter 16). It is unwise to assume that you do not need or cannot afford a lawyer. It is a much better policy to investigate the services mentioned in this chapter and determine whether and how a lawyer can help you.

## RESOURCES

The Utah State Bar maintains a list of legal resources, both local and national, to help consumers. This listing can be found online at [www.utahbar.org/public](http://www.utahbar.org/public).

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## THE UTAH COURT SYSTEM: AN INTRODUCTION

Courts have two main purposes — they settle conflicts when other less formal ways of settling them do not work, and they certify important events such as adoptions, probate of wills, and name changes.

Throughout the United States, there are two court systems. One system consists of state and local courts established under the authority of state governments. The other is the U.S. Supreme Court and the federal court system, created by Congress under the authority of the Constitution of the United States. Both the state and the federal systems exist in Utah.

### I. WHAT ARE UTAH'S STATE COURTS?

The Utah state court system is divided into trial courts and appellate courts. Trial courts are the courts where decisions are made, based on the evidence, by a judge or a jury. Appellate courts are the courts where parties seek to have the decision of the trial court reversed.

#### A. WHAT ARE UTAH'S TRIAL COURTS?

Utah's state trial courts have general, unlimited power to decide nearly every type of case, subject only to the limitations of the U.S. Constitution, the Utah Constitution, and Utah law. These courts handle most criminal matters, as well as many civil cases concerning probate of estates, marital disputes, dealings in land, commercial contracts, and personal injuries. Utah's trial courts are the District Courts (including the Small Claims Courts), the Juvenile Courts, and the Justice Courts.

## WHAT IS THE DISTRICT COURT?

District Courts are the highest level of trial court in Utah. Utah is divided into eight geographic districts, with each district having one District Court and several district judges. Most civil and criminal matters, unless otherwise noted in the Utah Constitution or a statute, begin in the District Court.

Of the cases heard by the District Courts, approximately eighty percent are civil cases, and over half of those civil cases are domestic cases (cases involving divorce, child custody, or support). The other twenty percent of the cases heard by the District Courts are criminal cases, and almost all of these cases are the less-serious misdemeanors.

## WHAT IS THE JUVENILE COURT?

Juvenile Courts are trial courts that have authority to handle cases involving juveniles under the age of 18 who have committed a crime or who are beyond the control of their parents. They also handle matters involving abused, neglected, or dependent children. Each of Utah's eight districts has a Juvenile Court, with several judges in each Juvenile Court.

Like the District Courts, the Juvenile Courts work to protect the public and punish criminals. But the Juvenile Courts have an additional job—to prevent children from growing into habitual criminals. To help transform young offenders into contributing members of the community, the Juvenile Courts have special programs such as the work restitution community service program.

## WHAT IS THE JUSTICE COURT?

Justice Courts are established by counties and municipalities, and their jurisdiction is much more limited than Utah's other trial courts. They have authority to deal with class B and C misdemeanors, violations of ordinances, small claims, and infractions committed within their territorial boundaries. Justice Court boundaries are determined by the boundaries of the local government entities, such as cities or counties, which hire the judges. There are County Justice Courts in the following counties: Beaver, Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Garfield, Grand,

Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, San Pete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne and Weber, with Municipal Justice Courts in various cities in each of those counties.

## B. WHAT IS THE SMALL CLAIMS COURT?

The Small Claims Court, often referred to as the "people's court," is where claims having a value less than \$7,500, including claims based on contracts, service disputes, and injuries, can be argued before a judge. The Small Claims Court is a part of the District Court. In a Small Claims hearing, each side states why money is or is not owed, after which the judge makes a decision about the claim.

## WHO USES THE SMALL CLAIMS COURT AND WHEN?

Any individual or business may use a Small Claims Court if the problem can be settled for \$7,500 or less. Examples of cases that are appropriate for filing in Small Claims Court are:

- A tenant sues a landlord for not returning a rent deposit when the apartment was left in the condition agreed upon in the original lease or contract.
- A retail merchant sues a customer for failing to pay for an item that was purchased and used.
- A customer sues a dry cleaner for refusing to replace an expensive garment that was ruined as a result of a poor or inappropriate cleaning method.
- A driver of an automobile sues another driver for damage to his or her car that is not covered by insurance.

Although any one of these cases can be a real problem for you, it may not have a large enough monetary value to warrant hiring an attorney or paying for a full court hearing. The Small Claims Court offers a way for individuals to solve these problems themselves in a faster and less expensive manner than a regular court proceeding.

## WHEN IS SMALL CLAIMS COURT HELD?

Small Claims Court hearings are usually held in the evenings. Salt Lake Department cases are held in the court located at 451 South 200 East, Salt Lake City, Utah 84111, on Tuesday, Wednesday, and Thursday.

## WHO ACTS AS THE JUDGE IN SMALL CLAIMS COURT?

Members of the Utah State Bar are sworn in to act as pro tem (temporary) judges. They have all the power of judges who sit in the daytime, but they are not paid. They voluntarily serve in the court to keep costs down and to aid citizens in resolving their problems. If the judge does not give a decision on the night of the court hearing, he or she will issue a written decision later.

## DO I NEED AN ATTORNEY IN SMALL CLAIMS COURT?

You do not need to hire an attorney to sue in Small Claims Court. In fact, in most cases attorneys are discouraged from attending.

## HOW MUCH DOES IT COST AND HOW MUCH CAN I RECOVER?

The cost of small claims court currently is \$45 for cases where the amount in dispute is less than \$2,000 and \$70 for cases where the amount in dispute exceeds \$2,000. You must have your affidavit served to the defendant by a process server, and this will require a fee as well. You can sue for a maximum of \$7,500. In addition to that amount you can recover the amount you spend to bring the defendant to court.

## HOW DO I FILE AND PREPARE FOR SMALL CLAIMS COURT?

1. *Call the Small Claims Court to see if the court can hear your case.*

Small Claims Courts can hear a case only if they have jurisdiction, or authority, over the claim and the person you

are suing. If the problem occurred within the territorial limits of the court, the judge can hear the case. Small claims territory comprises the same area defined by other state courts. The court can also obtain jurisdiction over the case if the person you are suing lives within the territory of the court.

After determining that the court has jurisdiction over your claim, the clerk at the court will help you prepare the documents you need to file to start a court case. You must fill out an affidavit, sign it, and certify that what you have stated in it is true. The case is then filed with the court, and a copy must be delivered to a constable or sheriff who will serve the defendant and set a date for trial. In Salt Lake County, you can call the following numbers for assistance:

- Salt Lake Department: (801) 238-7311
- Murray Department: (801) 261-0562
- Sandy Department: (801) 533-7887
- West Valley Department: (801) 533-7890

2. *Observe a session of court before your trial date.*

All small claims actions are open to the public and you should attend a case before your court date. This will show you what to expect and will make your night in court run more smoothly.

3. *Bring all papers and facts about your case to court.*

This information may include canceled checks, purchase orders, written estimates, contracts, leases, or anything in writing that explains why you think you have been wronged by the other party. Organize your documents in chronological order and be sure to check them carefully. Accurate records can be very important to the outcome of the case.

4. *Bring expert/impartial witnesses.*

If your claim deals with the adequacy of a service or workmanship, or if the amount of damages can be determined by an expert (such as a police officer in an accident case), you will need to subpoena the disinterested party to be a witness in your case. Under the rules of evidence, you cannot tell the judge what a third party has told you. That party must be present in court to testify for you.

### 5. Tell your story.

When you go to court, the plaintiff (the person who filed the claim) speaks first. After the plaintiff tells his or her side of the story and presents documents, the defendant will be allowed to ask the plaintiff questions. The defendant then presents his or her case, after which the plaintiff can ask questions. The judge may also ask questions of any of the witnesses who are in the court and will usually give a decision on that night.

Don't worry that you don't know legal jargon. The court wants citizens to tell their own stories. Simply state your case, identify the problem, and tell the judge why you think you should receive monetary damages.

If you have a good case, the facts will speak for you.

### WHAT DO I DO ONCE I GET A JUDGMENT?

If you win, you will receive a judgment against the individual you sued. This obligates the individual or business to pay you the amount awarded to you by the judge. If an appeal for a new trial before the District Court is not taken within ten (10) days, you can file a post-judgment action against the party in the court in which the case was originally filed. The filing fee for this type of action is \$35. This will require the defendant to testify under oath when payment will be made to you and to identify what assets the defendant has which you can collect against. If you have any problems, call the clerks at the court and they will help you file the next order in the court.

### C. WHAT ARE UTAH'S APPELLATE COURTS?

Parties who lose their cases in the trial court have the opportunity to appeal to a higher court for a reversal of the lower court's decision. These higher courts are called appellate courts. In Utah, there are two state appellate courts: the Court of Appeals and the Supreme Court. Appeals from the Small Claims Court and the Justice Court are given a new trial in the District Court.

### WHAT IS UTAH'S COURT OF APPEALS?

The Utah Court of Appeals hears appeals regarding decisions made in the Juvenile Courts and in District Court cases involving domestic relations, the Board of Pardons and Parole, and most criminal cases. It also hears appeals regarding the decisions of most state agencies. It does not, however, hear any cases involving criminal charges of first degree or capital (death penalty involved) felonies. The Court of Appeals also hears many other civil cases "poured-over" from the Supreme Court. The Court of Appeals has seven judges and is located in Salt Lake City. Cases are heard by panels of three judges.

### WHAT IS UTAH'S SUPREME COURT?

The Utah Supreme Court is the highest level of appellate court in the state. In cases heard by the Utah Court of Appeals, a losing party may seek an appeal in the Utah Supreme Court. First degree or capital felony cases, civil appeals from the District Court, and cases from some state agencies (such as the State Tax Commission) can be appealed directly to the Utah Supreme Court. There are five Supreme Court justices, and the court is located in Salt Lake City. Cases are heard by a panel of all five justices.

### II. WHAT ARE THE FEDERAL COURTS?

It is much more difficult to present a case in federal court than in state court because federal courts have power to decide only those cases over which the U.S. Constitution gives them authority. There are two categories of cases that can be heard in federal court: (1) cases that focus on an appropriate federal subject matter, and (2) cases between citizens of different states if the amount in controversy is more than \$75,000.

Examples of cases involving appropriate subject matter include: cases where the U.S. government is being sued, cases involving citizens of foreign countries or treaties with foreign nations, or cases involving the U.S. Constitution or laws enacted by the U.S. Congress.



## **A. WHAT ARE THE FEDERAL TRIAL COURTS?**

The federal court system, like the Utah court system, is divided into trial courts and appellate courts.

## **WHAT ARE THE FEDERAL DISTRICT COURTS?**

Like Utah trial courts, the federal trial courts are also called District Courts. Most federal cases are initially tried and decided in the District Courts. There are 94 federal District Courts in the 50 states. The federal District Court in Utah is in Salt Lake City and has five judges. It is also located in Ogden, Utah.

## **WHAT ARE THE BANKRUPTCY COURTS?**

Federal courts also include the U.S. Bankruptcy Courts. All bankruptcy petitions are filed in federal Bankruptcy Court. A Bankruptcy Court judge decides the issues involved in a bankruptcy proceeding. The Bankruptcy Court in Utah is in Salt Lake City and has three judges. The decisions of the federal Bankruptcy Court in Utah are usually appealed to the Tenth Circuit Bankruptcy Appellate Panel, and then to the Tenth Circuit Court of Appeals. A more complete discussion of bankruptcy is found in Chapter 11.

## **B. WHAT ARE THE FEDERAL APPELLATE COURTS?**

## **WHAT IS THE UNITED STATES COURT OF APPEALS?**

The first level of the federal appellate courts is called the Court of Appeals. The United States is geographically divided into 12 “circuits” with a federal Court of Appeals in each circuit. These federal Courts of Appeal review cases from the federal District Courts of their geographical regions, the U.S. Tax Court, and from certain federal administrative agencies. There is also a Court of Appeals for the Federal Circuit, which has national authority over specific types of cases, such as patents. Utah is part of the Tenth Circuit, which includes Utah, Colorado, Wyoming, New Mexico, Kansas, and

Oklahoma. The Tenth Circuit Court of Appeals is located in Denver.

## **WHAT IS THE UNITED STATES SUPREME COURT?**

The U.S. Supreme Court is the highest court in the country and primarily reviews only cases that involve a matter of great national importance. As a result, the U.S. Supreme Court only accepts a small number of cases each term. Most cases heard by the U.S. Supreme Court are appeals from one of the federal Courts of Appeals. The U.S. Supreme Court consists of nine justices and is located across the street from the U.S. Capitol Building in Washington, D.C.

## **III. DO I HAVE A RIGHT TO A JURY TRIAL?**

Both the Utah Constitution and the U.S. Constitution provide for the right to a trial by jury. However, parties can waive, or give up, this right. In civil cases, both parties have to agree to waive the right, but in criminal cases, only the defendant can decide to waive the right to a jury trial.

Approximately 90 percent of all cases filed with the courts are resolved without a trial. Most civil cases are settled out of court, which means that the parties work out an agreeable solution to the conflict themselves. A criminal case may be resolved without a trial if the defendant negotiates and agrees to plead guilty in exchange for a reduced sentence.

## **IV. DO I HAVE A RIGHT TO LEGAL COUNSEL?**

In both state and federal court, a defendant has a right to counsel (a right to a lawyer) in criminal cases where the defendant stands a chance of being imprisoned. Like the right to a jury trial, the right to counsel may also be waived. If a defendant in a criminal trial waives the right to counsel, the defendant will then be allowed to proceed pro se (representing him or herself). A defendant may be forced to proceed pro se if the judge refuses to appoint counsel and the defendant is unable to hire a lawyer.

## **V. HOW ARE JUDGES CHOSEN?**

### **A. HOW ARE JUDGES CHOSEN IN THE UTAH STATE COURTS?**

When a judicial vacancy arises in a Justice Court, the local government chooses the replacement. In all other courts, however, state judges are selected based on merit. There are four steps in Utah's merit selection process: nomination, appointment, confirmation and retention election. The nomination of judges is by a committee of lawyers and non-lawyers selected by the Governor. The Judicial Nominating Commission nominates between three and five of the best qualified candidates from among the applicants. The Governor appoints one of the nominees, who must then be confirmed by a majority of the Utah State Senate.

Three years after confirmation from the Utah Senate, state judges must stand for a nonpartisan, unopposed retention election. "Nonpartisan" means that judges do not run as Republicans, Democrats, or members of some other political party. Most state judges face retention elections every 6-10 years.

### **B. HOW ARE JUDGES CHOSEN IN THE FEDERAL COURTS?**

Federal judges are appointed by the President with the advice and consent of the U.S. Senate. Federal judges are appointed for life, which means that they continue to serve as judges until they choose to retire. The U.S. Constitution states that federal judges can be removed from office against their will only through "impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

Judges who are at least 65 years of age and have served as active judges for a minimum of 15 years may elect to take senior status. As senior judges, they may continue to hear cases, deal with administrative matters, and serve on special commissions and committees.

## **VI. HOW CAN I FIND OUT MORE ABOUT UTAH'S COURT SYSTEM?**

If you have questions about specific courts, you can find listings for the individual courts in the phone book.

For general questions about Utah state courts, or requests for the Courts' Annual Report or other materials, call the Administrative Office of the Courts at (801) 578-3800.

For information about the federal court system, please call (801) 524-5160. For information regarding legal services, call the Utah State Bar at (801) 531-9077.

# 17

## INSURANCE

Insurance coverage and provisions are contained in agreements between those seeking insurance protection and insurance companies. In exchange for insurance premiums paid, insurance companies reimburse expenses paid, damages incurred or losses suffered resulting from an event covered by the contract of insurance. Examples of insurance contracts are automobile insurance, fire insurance on a home, life insurance, health insurance, catastrophe insurance and so forth. In other words, a person or a business can receive a payment from an insurance company to help offset expenses such as medical payments, if such expenses are covered by a contract of insurance.

This Chapter discusses many, but not all types of insurance policies or coverages.

Because insurance is covered by a contract, generally prepared by a private insurance company, care should be taken to make sure the contract provides the insurance coverage that is requested. In addition, the price of insurance and coverages vary widely. Individuals are encouraged to shop various insurance companies and agencies to make sure the cost and coverage of the insurance are reasonable and appropriate.

In addition, one insurance company may be more financially stable than the next, which may be reflected in the cost of insurance, the payment of claims, or the length of time a particular company allows to pass before a claim is paid. Individuals are cautioned to seek independent advice from various insurance agents about the financial stability and reputation of various insurance companies and agencies.

### UTAH STATE INSURANCE DEPARTMENT

Most contracts of insurance, insurance companies, insurance agents and insurance agencies are regulated by Utah law or regulation. The Utah State Insurance Department

can answer many questions about insurance or complaints. The Utah State Insurance Department is located at 3110 State Office Bldg., Salt Lake City, Utah 84114, behind the State Capitol Building. The general information number is (801) 538-3800.

## INSURANCE LIMITS

Each policy of insurance, whether for automobile, life insurance, homeowners or otherwise, has as a key element the amount of insurance or the insurance limits of the policy. For example, the maximum payable from a particular automobile insurance policy may be as low as \$25,000 per accident, or lower, and could be as high as \$500,000, \$1,000,000 or more. The amount of insurance should be carefully considered as a reflection of the portion of the risk the insured person chooses to insure and that portion not insured. This issue becomes important in regard to certain insurance contracts, like automobile insurance, where the person insured may not have sufficient insurance to pay all of the damages for injuries caused.

## DEDUCTIBLES

Most insurance contracts include a provision for a deductible amount paid by the insured in the event the insurance contract provides coverage. Typically, deductible amounts vary and are used by insurance companies to reduce or increase the price of insurance, depending on how much the deductible is. The deductible is defined as that portion of an insured loss that must be paid by the insured before the insurance company will cover any of the loss. For example, if a health insurance policy has a \$500 deductible, the insured is required to pay \$500 toward any medical expenses before the insurance company is required to pay any benefits under the provisions of the insurance policy.

## AUTOMOBILE INSURANCE

Utah law requires owners and operators of motor vehicles within the state to maintain valid insurance for the operation of motor vehicles. In general, owners are required to have liability coverage, uninsured motorist coverage, underinsured motorist coverage, and personal injury protection. This rule applies to all vehicles driven on roads and highways within

the state, except that motorcycles, trailers, and semi-trailers are exempt from the personal injury protection requirement. It is against the law to operate a motor vehicle without proper insurance.

*Liability Coverage.* Liability coverage insures the owner (or other insured operator of the owner's vehicle, including relatives who live with the owner and anyone named in the policy as an insured) against damages the owner causes to another driver and/or vehicle if those damages exceed a minimum threshold amount set by statute (currently \$3000). Under Utah's no-fault law, damages totaling less than the minimum threshold amount are paid by the other driver's own insurance. Conversely, under Utah's no-fault law, if another driver causes damages to the owner and/or her vehicle, the owner's own insurance will cover those damages up to the minimum threshold amount.

*Collision Coverage.* Collision coverage reimburses the owner for damage the owner (or other insured operator of the owner's vehicle, including relatives who live with the owner and anyone named in the policy as an insured) causes to her own car above no-fault amounts. For example, if an owner runs a stop sign and collides with another vehicle, the owner's liability coverage pays for the damage to the other driver's car, but the owner's collision coverage pays for the damages to her own car.

*Comprehensive Coverage.* Comprehensive coverage insures damages to motor vehicles not typically caused by accidents. For example, comprehensive coverage would cover broken windshields, but not if the windshields are broken in an accident. But it would cover a windshield broken by a baseball or a tree limb.

*Uninsured or Underinsured Motorist Coverage.* In Utah, an owner must have additional insurance to insure against damages caused by a driver who has no insurance or whose insurance limits are not sufficient to cover the damages.

*Personal Injury Protection.* In Utah, an owner must obtain "Personal Injury Protection" insurance or "PIP," which covers limited medical expenses and provides certain other benefits to an owner who has been injured in an accident, regardless of which driver was at fault. PIP covers only those injuries growing out of an automobile accident. PIP should

not be confused with other health and accident insurance the owner may have.

Various other coverages may exist and each individual should consult with an insurance agent to learn more about available coverages and determine which to purchase. Banks and leasing companies generally require certain minimum coverages and policy limits as a requirement of lending money to purchase an automobile.

## HOMEOWNER'S HAZARD INSURANCE

Individuals can insure any buildings located on real property against losses resulting from fire damage, water damage from broken pipes or careless use of surface water, typical weather damage, and many injuries to persons while upon the property. This hazard insurance, sometimes called homeowner's insurance, may also cover theft and other related types of losses growing out of dwelling in a home or building ownership. Typically homeowner's insurance is required by a mortgage company or bank extending a loan that will be secured by the property. Homeowner's insurance typically does not insure against earthquakes, floods, landslides, tornados, hurricanes, or other unusual or catastrophic injuries or damages.

## CATASTROPHIC INSURANCE

Owners of real property can insure the buildings and dwellings from catastrophic damages caused by earthquake, flood, landslide, tornado, hurricane, and other natural disasters. Because typical homeowner's hazard insurance may not insure against these catastrophic events, special insurance policies can be obtained insuring against such risks.

## RENTERS INSURANCE

Renters may insure the contents of an apartment or other rented premises. The contents of the rented premises is usually called "personal property," while the structure and the land are called "real property." Renters insurance covers some of the same losses as homeowners insurance, including losses resulting from fire damage, water damage from broken pipes or careless use of surface water, typical weather damage, and injuries to persons while upon the property.

## LIFE INSURANCE

Life insurance covers individuals in the event of death and may include various options and alternatives, including accidental death or special coverage for very serious injuries. Life insurance policies vary widely in coverages and cost.

Insurance which only insures the life of an individual with no other investment or savings component is typically called *term insurance*. Term insurance, in general, is limited to the death benefits, and premium payments are only for the actual cost of the "death benefit" insurance.

Other forms of life insurance may be purchased as investments and/or to obtain tax benefits. Life insurance policies combined with a savings plan, investment plan, or combination of insurance policies on spouses and children can significantly increase the price of insurance. The combined savings plan or investment plan can have substantial payments and the insurance company may or may not guarantee a return on the savings plan investment. Individuals purchasing life insurance should carefully shop for insurance, comparing premium prices, insurance amounts on the life of the individuals being insured, and the quality of any attached investment chosen.

However, life insurance contracts can be very complicated, are difficult to compare, and may require time and study to review. The simplest approach to comparing one insurance company to another may be to request quotes on the monthly or annual premium for term insurance with a fixed death benefit of, for example, \$100,000.

## DISABILITY INSURANCE

Also varying widely in price and coverage are insurance policies providing for payments in the event an individual becomes disabled or suffers a permanent injury. Known as disability insurance, this insurance insures an individual against the risk of being unable to work because of disability. Disability insurance may cover partial as well as full body disabilities.

Individuals purchasing disability insurance should carefully compare the provisions of contracts which define the



disability, the waiting period for the disability payments to begin, the maximum number of payments, the total amount to be paid, and the cost of the disability insurance.

## HEALTH AND ACCIDENT INSURANCE

Health and accident insurance provides reimbursement for medical expenses. Health and accident policies can be purchased privately, through an employer's group, in groups through universities, associations and co-ops, and, like Medicare, can be obtained through a governmental entity.

Group insurance purchased by an employer may sometimes offer coverage to individuals who would otherwise be uninsurable. Utah and federal law require certain employers to allow an employee to continue health insurance coverage for a period of time after termination of employment (commonly called "COBRA" coverage), principally so that the employee may obtain other coverage, through employment or privately.

Health insurance policies typically contain a definite statement of the medical treatments and injuries covered, the amount the insurance will pay in the event the illness or injury arises, the deductible the insured must pay, and any limitations of the insurance contract. Under some health insurance policies, medical expenses related to an illness are treated differently than expenses related to an accidental injury.

The deductible required by an insurance policy is the amount of medical expenses the insured is required to pay. Deductibles can vary widely in amount. Some deductibles are multiple, meaning that two or more family members must reach a minimum deductible before the insurance company will pay medical expenses for that family member. Deductible application can be confusing, and the insured should be sure she to understands the insurance policy and the application of deductibles under it.

It is important for the insured to become familiar with the steps required to properly submit a claim under her health insurance policy. The policy will also explain what the insured should do if the insurance company denies a claim that the insured believes should be paid. When questions

arise, it is often helpful to speak directly with the insurance company's customer service department.

## BUSINESS INSURANCE

*Liability Insurance.* A variety of risks which may be suffered by businesses are covered by insurance. Many of these risks are insured under liability coverage, which, for businesses, includes injuries sustained by persons, customers, or others injured on the business premises and by employees of the business, whether in automobile accidents or otherwise. Such policies may also include theft insurance and coverage for other losses incurred by businesses.

This chapter does not further discuss business insurance or the risks covered by business liability insurance. The reader is directed to inquire with other sources, including insurance companies or agencies, to learn about the various risks business liability policies may cover for the benefit of business owners.

*Workers' Compensation.* Businesses with employees are generally required by Utah law to provide workers compensation insurance for employees. Workers' compensation insurance provides payments to individuals for injuries received on the job. Such insurance may also provide benefits to survivors when employees are killed or disabled on the job.

Workers' compensation insurance can be obtained through many different insurance companies, including the Workers Compensation Fund of Utah.

*Unemployment Insurance.* Employees may receive unemployment insurance benefits if they lose their jobs under circumstances which make them eligible for these benefits. Unemployment insurance is provided for by law and supervised by the Utah Department of Workforce Services, which requires employers to make contributions to the state fund for the purpose of paying benefits to eligible unemployed individuals.

# 18

## IMMIGRATION

These are general guidelines for U.S. citizenship. For details and requirements, visit the website of the U.S. Citizenship and Immigration Services (USCIS) at [www.uscis.gov](http://www.uscis.gov).

### U.S. CITIZENSHIP

U.S. Citizenship is obtained by:

1. Birth in the U.S., regardless of the immigration status of parents.
2. Birth abroad to U.S. citizen(s) who have resided in the U.S.
3. Naturalization
  - a. Generally, must be a permanent resident for at least five years.
  - b. Three years of permanent residence if married to a U.S. citizen during the entire three-year period.
  - c. Other limited rules, including military service may also shorten the period to three years.

A person who is not a U.S. citizen is considered an alien and is subject to the immigration laws, regulations and policies.

### OVERVIEW

The general considerations governing U.S. Immigration Policy are:

1. Family unification

2. Protection of U.S. workforce
3. Asylum/Refugee protection
4. Protection against unlawful immigration
5. Encouraging people having extraordinary accomplishments to come to the U.S.
6. Security concerns

There are two types of lawful visas:

- **Immigrant Visas**, which lead to permanent residence
- **Non-Immigrant Visas**, which allow a person to come to the U.S. for a limited period of time

## I. IMMIGRANT VISAS

### Family Visas (permanent)

Immediate Relatives – unlimited number:

- Spouse of U.S. citizen
- Parent of 21+ year-old U.S. citizen
- Child of U.S. citizen (unmarried and under 21 years of age)

There is a system of preference in issuing family visas.

There are also special circumstances which apply to spouses or children of U.S. citizens or permanent residents who have been subjected to abuse which allow the victims of abuse to self-petition without requiring the abusive U.S. citizen or permanent resident to file the petition.

### Employment Visas (Permanent)

Approval of an Employment Based Immigrant Visa is necessary in order to apply for permanent residence (Green Card). This requires a permanent job offer. Some

individuals may qualify to apply directly with the Immigration and Naturalization Service for such visas without having to first obtain a Labor Certificate from the U.S. Department of Labor that there are no available qualified U.S. workers for the position. These include intercompany transferees who are either managers or executives, people of international renown in their fields, and individuals who can show that their immigration is in the U.S. national interest. All others must first obtain an approved Labor Certificate.

The Labor Certificate process involves an attempt to locate qualified U.S. workers for the position. Minimum requirements for the position must be established, and these must each be based upon “business necessity.” This means that a person must possess certain qualifications in order to be able to perform the job. The Department of Labor may require a justification of minimum job requirements, as unduly restrictive requirements will lead to a denial of the Labor Certificate. On the other hand, minimum requirements which are not specific enough will lead to many potentially qualified applicants applying for the position. It is important, therefore, to seek a balance and to be certain that any job qualifications can be justified by business necessity. As a general rule, education, skills, and experience gained on the job with the petitioning employer may not be included as minimum job requirements.

The current Labor Certificate process is called **PERM**. The PERM process evaluates Labor Certificates on an audited basis, rather than having the state employment office review and coordinate recruitment. The PERM procedures require specific recruitment prior to filing the application:

- Two advertisements on two different Sundays in a newspaper of general circulation in the area of intended employment;

- At least three of the following additional recruitment steps (for professional positions only, usually those requiring a bachelor's degree):

- a. Job fairs
- b. Employer's website
- c. Job search website other than employer's

- d. On-campus recruiting
- e. Trade or professional organizations
- f. Private employment firms
- g. An employee referral program, if it includes identifiable incentives
- h. A notice of the job opening at a campus placement office, if the job requires a degree but no experience
- i. Local and ethnic newspapers, to the extent they are appropriate for the job opportunity
- j. Radio and television advertisements

The ads need to have been placed no longer than 180 days nor shorter than 30 days from the date of PERM filing. The position must offer a salary of 100 percent of the prevailing or average wage for similar positions in the area of intended employment.

As indicated above, Labor Certificate Approval is generally required for Employment Based Immigrant Visa except for:

#### **A. International Manager/Executive**

The individual must have been employed abroad for one year immediately preceding three years in a *managerial or executive capacity* for:

- The same employer
- A subsidiary
- An affiliate or controlled entity

The individual must be coming to the U.S. to perform managerial or executive duties for the U.S. organization.

#### **B. Extraordinary Alien**

A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national

or international acclaim and that the alien's achievements have been recognized in the field of expertise through prizes or awards for excellence in the field of endeavor.

#### **C. Outstanding Researcher/Professor**

A petition for an outstanding professor or researcher must be accompanied by evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition, including evidence that the alien has at least three years of experience in teaching and/or research in the academic field.

For a position involving research with a private company, it must be shown that the company has at least three full-time research staff with a proven record of academic accomplishment. The INS has indicated that "engineering and product design do not constitute research, but rather the technological application of existing research."

#### **Refugees/Asylees**

**Asylees** are granted the status in the U.S.;

**Refugees** are granted the status abroad.

Test: "Well founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion."

Once a person has been granted refugee/asylee status, he/she is eligible to file for permanent residence after one year. Permanent residence status will be granted when a visa becomes available.

## **II. NON-IMMIGRANT VISAS**

Non-Immigrant visas are quicker than the Green Card. They include:

- B-1/B-2: short-term visitors visa
- F-1: students engaged in an authorized full course of study

- H-1B (specialty occupation): the “workhorse” of most Non-Immigrant Visas for college graduates
- L-1 Visa (intercompany transferees): available to companies that wish to temporarily transfer key employees to their operations in the U.S.
- E-1 and E-2 (treaty traders and investors): as they relate to businesses in the U.S.
- H-2 (temporary workers in less skilled occupations) and H-3 (trainees).

Examples of non-immigrant visas are:

### **F-1 (Student Visa)**

The student must be engaged in a full course of study at an approved institution. The status must be confirmed by the international student office, which generates a SEVIS I-20 form. Students who complete their studies may apply for up to one year of authorized practical training employment. Students can also engage in authorized part time on-campus employment, and if approved by the school, periods of curricular practical training.

### **H-1B**

The basic requirement is that the position must be a “specialty occupation,” i.e., a position which requires as a basic entry level requirement the acquisition of at least a bachelor’s degree. The position must pay no less than 100 percent of the average wage for similarly qualified people performing similar jobs in the geographic area of employment. An individual may be in H-1B status for a total of six years. An individual who is already in H-1B status can begin working for a new employer as soon as the new employer files a new H-1B visa petition.

### **K Visas**

K-1 visas are available to fiancées of U.S. citizens. Marriage must occur within 90 days of entry as a K-1. K-3 visas are available to spouses of U.S. citizens who are awaiting an adjudication of their immigrant visa petition. The K-3 visa often allows an earlier entry into the U.S.

### **L-1 Intracompany Transferees**

The L-1 is available to employees who have worked abroad for at least one of the last three years for affiliated organizations in either a managerial, executive, or specialized knowledge capacity. The job abroad and in the U.S. must involve working in executive, managerial, or specialized knowledge capacities.

### **TN Trade NAFTA Visas**

This visa is based upon the North American Free Trade Agreement (NAFTA) and is available to “professional” workers from either Canada or Mexico. Entry and processing requirements from Canada may be accomplished almost immediately. This visa status requires that the person be coming to provide specific professional services which are listed in the treaty and which include computer systems analysts, engineers, scientific technicians, management consultants, and others. A bachelor’s degree is generally required, although management consultants may show five years experience in a field relating to the consulting agreement. TN Visa status is valid for one year initially and may be renewed in one-year increments.

### **O-1 “Extraordinary Aliens”**

Those who have risen to the top of their field and have a sustained national or international reputation. Must submit consultation from Peer Group attesting to qualifications.

## **UNLAWFUL IMMIGRATION**

Current immigration laws give very limited rights to unlawful immigrants, such as people who have overstayed their visas or who have entered the U.S. without inspection.

- **“Immediate Relatives.”** May apply for permanent residence only if “inspected and admitted.” Need not have maintained valid status as long as they were admitted and inspected. Not available to people who entered without inspection who did not have a visa petition or Labor Certificate Application filed before 4/30/01.
- **Section 245i.** Must have Labor Certificate Application or visa petition filed before 4/30/01. Eligible to file for immigration (if otherwise qualified) upon payment



of special \$1000 fee. Can immigrate under either employment based or family based upon approval of Immigrant Visa Petition and reaching a current priority date. If qualified, this section applies to individuals who entered without inspection or who have otherwise been unlawfully in the U.S.

## UNLAWFUL PRESENCE

An individual who is unlawfully present in the U.S. for more than 180 days AND travels abroad is inadmissible for three years.

An individual who is unlawfully present for longer than one year AND travels abroad is inadmissible for ten years.

Unlawful presence does not exist for:

- Periods of time when the alien is under 18 years of age.
- Periods in which a bona fide asylum application is pending, unless the person engages in unauthorized employment.
- Periods a student did not attend school full time or engaged in unauthorized employment if the student was initially admitted for Duration of Status (D/S) until notified by the Immigration Service of failure to maintain status.

A waiver is available to the spouse, son, or daughter of a U.S. citizen or permanent resident if a refusal of admission would result in extreme hardship to the qualifying relative. A waiver is NOT available to the parents of U.S. citizens.

## EMPLOYMENT

Documentation must be provided to the employer that verifies the lawful ability to work in the U.S. For details visit the U.S. Citizenship and Immigration Services (USCIS) website at [www.uscis.gov](http://www.uscis.gov).

## PUBLIC BENEFITS

A number of public benefit programs are available to the noncitizen. These include, but are not limited to, Food

Stamps, Medicaid, and financial assistance. However, each benefit program has specific requirements for noncitizens. In general, the noncitizen must be an immigrant alien and meet certain eligibility requirements. For information contact the Department of Workforce Services at (801) 526-9675 or at [jobs.utah.gov](http://jobs.utah.gov).

**A final word of caution.** The majority of forms and applications do not require an attorney to prepare. You should seek competent legal advice if you have any questions about either your immigration status or the rights or benefits to which you may be entitled. Beware of someone who promises you a Green Card or employment authorization unless you are fully aware of the risks and benefits. It is your right to obtain a second opinion before giving money. A licensed attorney, who is governed by rules that require not only competent but also ethical representation, can only give legal advice. Too many people have lost their money and their ability to remain the U.S. through “services” provided by immigration consultants who are not lawyers.

# RESOURCES

## INFORMATION & REFERRAL LINE

Dial 211 or 801-978-3333  
[www.utahcares.utah.gov](http://www.utahcares.utah.gov)

Utah Cares is a free, confidential tool that helps you find state and community services. Utah Cares can help connect you with providers that offer basic services, such as, housing, food, child care, transportation, financial assistance information and much more.

## ABUSE HOTLINES

Domestic Violence	1-800-897-LINK (5465)
Child Abuse Reporting	1-800-678-9399
Adult Protective Services	801-264-7669 or 1-800-371-7897 or <a href="http://www.hsdaas.utah.gov">www.hsdaas.utah.gov</a>
Utah Office of Public Guardian	801-538-8255 or <a href="http://www.opg.utah.gov">www.opg.utah.gov</a>
Utah Legal Services	801-328-8891 or 1-800-662-4245

## BETTER BUSINESS BUREAU OF UTAH

5673 S Redwood Road, #22	801-892-6009
Salt Lake City UT 84123	<a href="http://www.utah.bbb.org">www.utah.bbb.org</a>

The BBB of Utah is a private agency that provides information about the business community locally and out of state. They assist with complaints concerning local businesses, mail orders, and magazine subscriptions, and expose fraudulent and unethical business practices in selling and advertising.

## CHILDREN’S AID SOCIETY OF UTAH

652 26th Street	801-393-8671 or
Logan, UT 84401	1-800-273-8671
	<a href="http://www.casadoption.org">www.casadoption.org</a>

Provides adoption and counseling services.

## CHILDREN'S SERVICE SOCIETY OF UTAH

124 South 400 East, # 400      801-355-7444 or  
Salt Lake City, UT 84111      1-800-839-7444 or  
1-877-355-7444  
[www.cssutah.org](http://www.cssutah.org)

Provides adoption and parenting services, and child care referrals.

## DEPARTMENT OF HEALTH (DOH)

DOH Information Line      801-538-6101

State Community and Family Health Services Division (CFHS) provides services related to health promotion, maternal and child health, and services for children with special health care needs. You may contact them at [www.health.state.ut.us/cfhs](http://www.health.state.ut.us/cfhs) or at the following numbers:

### Hotlines and Information Phone Lines

Baby Your Baby	1-800-826-9662
Baby Watch Early Intervention	1-800-961-4226
Cancer Screening	1-800-717-1811
Check Your Health	1-888-222-2542
CHIP (Children's Health Insurance Program)	1-888-222-2542
Diabetes Information Line	1-800-888-1734
Domestic Violence Information Line	1-800-897-5465
Head Start	1-888-222-2542
Health Resource Line	1-888-222-2542
Healthy Utah	1-888-222-2542
Immunize By Two	1-800-275-0659
Medicaid Eligibility	1-800-662-9651
Pregnancy Risk Line	1-800-822-2229
Utah Tobacco Quit Line	1-888-567-8788
Tobacco Resource Line	1-877-220-3466
Utah Department of Health Main Line	1-801-538-6003

## DEPARTMENT OF HUMAN SERVICES (DHS)

1-800-662-3722      [www.dhs.utah.gov](http://www.dhs.utah.gov)

Constituent Services provides assistance regarding human services, adult and disabled services, recovery

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services, domestic violence, individual and family counseling, youth services, and information and referral services.

The Office of Child Protection Ombudsman provides assistance with issues such as adoption, foster care, and child abuse.

## DEPARTMENT OF WORKFORCE SERVICES (DWS)

PO Box 45349      801-526-WORK (9675)  
Salt Lake City, UT 84145      [jobs.utah.gov](http://jobs.utah.gov)

The Department of Workforce Services provides assistance with job placement, job training, Food Stamps, financial support, Medicaid, Family Employment Program, Emergency Work Program, employment supported child care, and general assistance.

## HOUSING AND LANDLORD/TENANT

**Utah Legal Services**      801-328-8891 or  
205 N 400 W      1-800-662-4245  
Salt Lake City UT 84103      [www.uls.state.ut.us](http://www.uls.state.ut.us)

(for additional locations see website)

Utah Legal Services handles civil cases for those who qualify. It provides assistance for family problems, public assistance, health benefits, housing, and senior citizen issues.

**Utah Apartment Association**      801-487-5619 or  
448 E Winchester Ave #460      1-888-244-0401  
Murray, UT 84107      [www.uaahq.org](http://www.uaahq.org)

The Utah Apartment Association promotes professionalism, education, career development and proactive legislative efforts to benefit owners, investors, residents, and association members.

## Housing Outreach Program at the Community Action Program

801-359-2444  
764 S 200 W      [www.slcap.org](http://www.slcap.org)  
Salt Lake City, UT 84101

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For other locations in the state, visit [www.utahcares.utah.gov](http://www.utahcares.utah.gov).

The Salt Lake Community Action Program (SLCAP) provides a wide range of services aimed at helping low-income people become self-sufficient. It offers various programs that address housing needs.

## JURY DUTY

See Utah Code §§78-46-1 to 78-46-41 (2005)

## Citizen Responsibilities

[www.voteutah.org/learning/citizenship/responsibilities.html#jury](http://www.voteutah.org/learning/citizenship/responsibilities.html#jury)

## Employee and Employer Responsibilities

U.S. Department of Labor      1-866-4-USA-DOL  
    TTY      1-877-889-5627  
[www.dol.gov/topic/benefits-leave/juryduty.html](http://www.dol.gov/topic/benefits-leave/juryduty.html)

## Reporting for Jury Duty

U.S. District Court                      801-524-6100  
 District of Utah  
 350 South Main, Room 150  
 Salt Lake City, UT 84101  
[www.utd.uscourts.gov/documents/jurypage.html](http://www.utd.uscourts.gov/documents/jurypage.html)

## LEGAL RESOURCES

- Finding an Attorney

**Utah State Bar**                      801-531-9077  
 645 South 200 East  
 Salt Lake City, UT 84111  
[www.utahbar.org/public/useful\\_information.html](http://www.utahbar.org/public/useful_information.html)

**Utah Legal Services**                      [www.uls.state.ut.us](http://www.uls.state.ut.us)

205 N 400 W                              801-328-8891 or  
 Salt Lake City UT 84103 1-800-662-4245

455 N University Ave #100      801-374-662-1563  
 Provo, UT 84601                      1-800-662-1563

893 24th Street #300                      801-394-9431  
 Ogden, UT 84401                      1-800-394-9431

965 South Main #3                      435-586-2571  
 Cedar City, UT 84720                      1-800-662-1772

Utah Legal Services provides representation to low income and aging individuals who are experiencing civil, domestic, public assistance or immigration legal problems.

- Bankruptcy and Credit Problems

**Debt Advisory**                      [www.debtadvisory.net](http://www.debtadvisory.net)

A debt, credit and financial resource center.

**Utah Legal Services**                      801-328-8891 or  
 205 N 400 W                              1-800-662-4245  
 Salt Lake City UT 84103                      [www.uls.state.ut.us](http://www.uls.state.ut.us)

(for additional locations see website or above)

- Property Rights and the Making of a Will

**Utah Probate Solutions**                      [www.utahprobate.com](http://www.utahprobate.com)

**Utah State Bar**                              801-531-9077  
 645 South 200 East                      [www.utahbar.org](http://www.utahbar.org)  
 Salt Lake City, UT 84111

**Utah Legal Services**                      801-328-8891 or  
 205 N 400 W                              1-800-662-4245  
 Salt Lake City UT 84103                      [www.uls.state.ut.us](http://www.uls.state.ut.us)

(for additional locations see website or above)

- Small Claims Court

To find a location in Utah and for more information visit [www.utcourts.gov/howto/smallclaims](http://www.utcourts.gov/howto/smallclaims).

- Utah Courts [www.utcourts.gov](http://www.utcourts.gov)

The Utah Courts website provides an online court assistance program for completing papers online for divorce, landlord-tenant, protective order, and guardianship filings.

## PLANNED PARENTHOOD CLINIC

1-800-230-PLAN (7526) [www.plannedparenthood.org](http://www.plannedparenthood.org)

Planned Parenthood affiliate health centers provide culturally competent, high quality, affordable health care.

## PUBLIC BENEFITS

**Information & Referral Center** Dial 211  
[www.utahcares.utah.gov](http://www.utahcares.utah.gov)

**Medicaid** 1-800-662-4227  
[www.health.utah.gov/Medicaid](http://www.health.utah.gov/Medicaid)

**Medicare** 1-800-MEDICARE  
[www.medicare.gov](http://www.medicare.gov)

**Social Security Administration** 1-800-772-1213  
[www.ssa.gov](http://www.ssa.gov)

**UT Dept. of Workforce Services** 801-526-9675  
[jobs.utah.gov](http://jobs.utah.gov)

**UT Division of Aging & Adult Services** 801-538-3910  
[www.hsdaas.utah.gov](http://www.hsdaas.utah.gov)

**Utah Issues** 801-521-2035  
[www.utahissues.org](http://www.utahissues.org)

**Utah Legal Services** 801-328-8891 or  
1-800-662-4245  
[www.uls.state.ut.us](http://www.uls.state.ut.us)

**Utahns Against Hunger** 801-328-2561 or  
1-800-453-FOOD(3663)  
[www.uah.org](http://www.uah.org)

## SENIOR CITIZEN RESOURCES

### State Division of Aging and Adult Services

120 North 200 West 801-538-3910  
Salt Lake City, UT 84103 1-877-4AGING0 or  
1-877-424-4640 [www.hsdaas.utah.gov](http://www.hsdaas.utah.gov)

Assistance is provided in finding services such as transportation, adult day centers, legal assistance, adult protective services, living will information, in-home services, substitute care, home-delivered meals, and senior centers. Legal assistance is provided with a network of legal service providers throughout Utah.

## STATE DIVISION OF SERVICES FOR PEOPLE WITH DISABILITIES

120 North 200 West 801-538-4200 or  
Salt Lake City, UT 84103 1-800-837-6811  
TDY 1-801-538-4192  
[www.dspd.utah.gov](http://www.dspd.utah.gov)

Promotes opportunities and provides supports for persons with disabilities; provides protection and advocacy.

## VOTING RIGHTS

**Utah State Elections Office** 801-538-1041 or  
State Capitol E325 1-800-995-VOTE  
Salt Lake City, UT 84114 [www.elections.utah.gov](http://www.elections.utah.gov)

The Utah Voter Information Pamphlet is prepared under the direction of the Lieutenant Governor for each general election and mailed to Utah citizens.

[www.voterlink.utah.gov](http://www.voterlink.utah.gov)

**League of Women Voters** 801-272-8683  
3804 Highland Dr., Ste. 8D [www.lwvutah.org](http://www.lwvutah.org)  
Salt Lake City, UT 84106